The Solicitors' Journal

VOL. 90 — Saturday, December 7, 1946 — No. 49

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CURRENT TOPICS

Sir Wyndham Childs

THE legal profession can claim the late WYNDHAM CHILDS, who died on 27th November, when he was within a fortnight of attaining his seventieth birthday, as in more than one sense one of its own. His father was Mr. Borlase Childs, a Cornish solicitor, and when he became old enough, he became articled to his father. The outbreak of the South African War changed his career, and there followed years of soldiering. One of the first things that a student learns in his constitutional law studies is that a member of the forces is not obliged to obey an illegal order, even if, apparently, given in the course of duty and for the purpose of maintaining discipline. Childs displayed his knowledge and nice sense of both law and justice in disobeying a technically illegal order concerned with the movement of some deserter prisoners. He was summoned to Capetown, where he pointed out the relevant provision in the "Manual of Military Law" to General Sir Nevil Macready. The General thanked him, and not long afterwards he was appointed Garrison Adjutant at the Castle, Capetown. This appointment was regarded by Childs as the beginning of his military career. In the 1914–18 war an alteration in the court martial system which he suggested enabled the sentence of death to be remitted in 89 per cent. of the cases in which it was imposed. He was Assistant Commissioner of Police from 1921 until 1928.

Lords Debate on Divorce

IN drawing attention in the Lords on 28th November to the great number of matrimonial causes awaiting trial, the MARQUESS OF READING questioned whether the county court judges had sufficient leisure to take on the very considerable duties of Commissioners as suggested by the Denning Committee. LORD MERRIMAN in his maiden speech in the Lords said that all the lists in the provinces would be undoubtedly cleared by the end of the term, and he believed the same could be said of the undefended list in London. Lord Merriman refuted a suggestion in the Denning Report that the practice of the judges was in the past governed by obscure directions. Emphasising the need for the right of sole audience of the Bar, he said that he would never attempt to deny the high standard of skill and honour which the best type of solicitor set himself. But, his lordship said, in divorce cases every judge knew the value of having the assistance of counsel, and so, he believed, did the best type of solicitor, because they knew they could warn their clients that a case would have to pass through the mesh of severe scrutiny by counsel before it was presented to a court. With regard to the question of conciliation, he said that on behalf of the judges of the Division, he had proposed there should be set up a commission of conciliation and inquiry, which would work in tribunals consisting of a lawyer and welfare or probation officer, before whom both of the parties should be encouraged to attend. If a commission such as that had reported to the court, all that would be necessary was publication in the locality where the parties were known of—to use a colloquial term—something like a "banns of divorce." If there was no objection or intervention by anyone the decree could be pronounced without the necessity of a public trial. The ARCHBISHOP OF CANTERBURY said that every divorce was a disease point in the body politic, which depended for its health upon family life, and he suggested that the civil ceremony should make clear the lifelong nature of the contract of marriage. Replying to the debate, the LORD CHANCELLOR said that he regarded the figures of divorce with great concern. He estimated that this year they would exceed 38,000 and next year he was faced with a total estimate of 50,000. Most county court judges had some leisure days, and there was no fear that the work would be shirked. The motion was by leave withdrawn.

Honour of Solicitor-Advocates

ATTENTION has been drawn by the President of The Law Society, Mr. D. T. GARRETT, in a letter to *The Times* of 3rd December, to a passage in Lord Merriman's speech in the debate referred to above. Urging the retention of the sole audience of the Bar in divorce cases, he is reported to have said: "It would be simply deplorable if this business got into the hands of advocates who were concerned only to get any case through, by any method, and unchecked by the very high standard of honour in this matter which is habitually observed by the Bar to the court." The suggestion that a lower standard of professional integrity obtains among solicitors than that maintained by the Bar is vigorously repudiated in Mr. Garrett's letter, and his protest will be warmly endorsed by the whole profession.

Services Divorce Department

THE profession can look back with justified pride on the work it has contributed to the well-being of the forces in the establishment and expansion of the Services Divorce Department. A memorandum distributed with the November issue of the *Law Society's Gazette*, gives details of the history, organisation and achievements of the department. The order of 4th July, 1946, authorising payment to counsel of a brief fee not exceeding £1 3s. 6d. for undefended and discretion cases, and £3 5s. 6d. for defended cases sent by the Services Divorce Department, has greatly simplified the task of securing the services of counsel. It is also stated that the expansion

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scheme has involved (*a*) for the Lord Chancellor's Department the establishment of a new Divorce Registry at Ingersoll House, Kingsway, for services divorce cases, the recruitment, strengthening and training of staff of the provincial registries affected and the making of the necessary arrangements to prevent delay by lack of "judge-power"; and (*b*) the increase and training of staff of The Law Society. In March, 1946, the staff numbered about 100. At 31st October, 1946, it was 532. Applications were received from 157 solicitors, of whom 85 were short-listed and interviewed. Office boys, being difficult to obtain, were replaced by girls. As a result of the Lord Chancellor's appeal for shorthand typists, 2,797 applications were received. The pamphlet includes a full account of the organisation and work of the accounts, costs, post-decree, and pre-allocation sections, as well as of the intensive training of solicitors and managing clerks that was undertaken. Additional premises were obtained at No. 1, Clement's Inn, and at No. 33, Carey Street. Tribute is paid to the help given by the Ministry of Works in attending to the necessary alterations, furnishing and decorating as well as to H.M. Stationery Office for the supply of typewriters, and the G.P.O. for telephones.

The Department's Achievement

IT is stressed in the Council's pamphlet on the expansion scheme of the Services Divorce Department that the part played by that department in disposing of service divorce cases is only part of a combined operation. The Services Legal Aid Sections, the Civilian Practitioner's Scheme, the Poor Persons Committee, conducting solicitors, the divorce registry and the courts themselves all play their part in bringing cases to trial. The secretary has made frequent progress reports to the Lord Chancellor, and the Council expresses its gratitude for the ready and valuable assistance given at all times by his department. An appendix to the pamphlet gives statistics of cases held by the Law Society at the 31st October 1946. Service cases held by the Poor Persons Department where no deposit has been paid numbered 2,622, and in 245 a deposit had been paid and the cases were being transferred to the pre-allocation section. The total number of cases with conducting solicitors was 18,081, and the total number of service cases with the Law Society was 30,587, or, including civilian cases, 34,962. Certificates granted between 1st April and 31st October started at 69 (2nd April) and reached their peak of 1,242 on 16th July. The number granted on 29th October was 305, and the total for the period was 15,656. The pamphlet also contains particulars of the offices of the Services Divorce Department and the conducting solicitors at the 31st October, 1946. Eighteen solicitors are employed at the Clement's Inn and Carey Street offices, one at Birmingham, three at Bristol, one at Cardiff, three at Leeds, two at Liverpool, two at Manchester, one at Newcastle-upon-Tyne, one at Norwich and two at Nottingham.

Technical Language in Statutory Rules and Orders

THE Third Special Report of the Select Committee on Statutory Rules and Orders welcomes the introduction of explanatory footnotes or any other arrangements clarifying rules and orders. It deprecates, however, any tendency to frame the instrument itself in technical language which has little meaning to the ordinary citizen, and to rely exclusively upon the footnote for giving him the guidance he needs. The committee appreciate that administrative policy and the scientific rules of legislative drafting must largely influence or even dictate the form of instruments; but are convinced that the most successfully framed document is one which is self-explanatory, and that Statutory Rules and Orders, not being subjected to the Parliamentary processes to which a Bill is exposed, can allow themselves a more generous range of expository expression than one expects to find in a modern statute. To cite an illustration, the substantive part of S.R. & O., 1946, No. 890, runs thus: "The Laundry (Control) Order, 1942, as amended by The Laundry (Control) (No. 2) Order, 1942, shall have effect as if subparagraph (3) of paragraph 2 were omitted, and the Laundry (Control) (No. 2) Order, 1942, is hereby revoked." To that unilluminating provision, the report states, the following explanatory note is added: "The effect of this order is that a launderer is no longer required to give notice to the Board of Trade if he intends to close down his business either temporarily or permanently." In regard to short titles, recommended in the Second Report, it is stated: "Not every instrument can have so compendious a name as 'The Cucumbers Order' or 'The Spoilt Beer Regulations,' but ingenuity might usefully be employed to cut down such cumbrous labels as 'The Artificial Insemination (Importation and Exportation of Semen and Artificial Semen) Regulations,' 'The Control of Fuel (No. 3) Order, 1942, General Direction (Central Heating and Hot Water Plants) No. 6,' or 'The Compensation of Displaced Officers (War Service) (Forms for Teachers) Regulations.'"

Articled Clerks and National Service

THOSE who rightly feel concern for the articled clerks whose careers and education suffer interruption as the result of the retention of conscription will be interested in an announcement in the November issue of the *Law Society's Gazette* of active intervention by the Council of The Law Society in their interests. In a White Paper entitled "Calling up to the Forces in 1947 and 1948" (Cmd. 6831, price 1d.), provision is made for articled clerks, who become liable to be called up for national service after December, 1946, to be eligible for deferment, subject to certain conditions, for the period necessary to complete their training. It is stated in the current issue of the *Gazette* that the Council has the matter under consideration, as there will clearly be repercussions in the practice hitherto adopted in dealing with applications by articled clerks and intending articled clerks for concessions in respect of national service. It is probable, the announcement states, that no concessions will be granted in respect of national service occurring after 31st December, 1946. It is hoped to include in the December issue of the *Law Society's Gazette* a statement of the Council's decisions in the matter.

Advertising the Law

"IGNORANCE of the law is no excuse." The dilemma confronting the citizen of to-day when faced with this proposition requires no emphasis. Now more than ever the multiplicity of departmental orders, rules and regulations (to say nothing of the accumulated results of many centuries' labour of Parliament and the courts) make the presumption a manifest fiction. Can commercial advertising play a part in alleviating the burden? In an entertaining lecture to the Publicity Club of London at the Waldorf Hotel on 2nd December, Mr. WILLIAM CHARLES CROCKER considered that one initial difficulty lay in determining how much law to teach the layman. The danger of "little learning" was amusingly illustrated by a document which had once come into the lecturer's hands purporting to be a "burglary" insurance policy in respect of a "lock-up shop"; and on the strength of this remarkable policy a claim had been made, and paid, as a result of the shop being broken into during the proprietor's absence at his mid-day meal! But even if it were possible to decide what rules of law should be publicised there remained the fatal inadequacy of paraphrase. "Thou shalt not steal" is no substitute for the Larceny Act and the innumerable decisions thereon. Could the advertising copy-writer succeed where for centuries the lawyer has failed? The jargon of the law was necessary in the interests of certainty, and all attempts at popularising it were bound to lead to a golden harvest for the legal profession. In reply to questions, the lecturer said that he believed that publicity could play a great part in the relations between lawyers and laymen, and it was at his instance that a Public Relations Committee of The Law Society had been established. He added that he would like to see the Council

of The Law Society, in competition with banks and insurance companies who advertise for executorship and trustee business, publicising solicitors; but this was perhaps too much to hope.

Tithe Redemption Annuities

IT is announced in the November issue of the *Law Society's Gazette* that the Treasury have fixed at 2½ per cent. as from the 8th October, 1946, and until further notice, the rate of interest to be adopted in discounting future payments in respect of instalments of an annuity charged by the Tithe Act, 1936, for the purpose of determining, in accordance with the Redemption Annuities (Extinguishment and Reduction) Rules, 1937, the amount of consideration money to be paid for the redemption of the annuity. On the basis of the rate of interest, the amount required to redeem an annuity is stated to be approximately 27½ times the amount of the annuity (or 55 times the amount of the half-yearly instalment).

Recent Decisions

In *Smith* v. *Poulter*, on 27th November (*The Times*, 28th November), DENNING, J., allowed an appeal from a master's refusal to set aside a judgment for possession of a dwelling-house coming within the Increase of Rent and Mortgage Interest Restrictions Acts, 1920 to 1939. His lordship held that the court had no power to make an order for possession until it was satisfied that it was reasonable to do so, and the court had not in fact considered this question before judgment was signed. Section 3 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, applied, even though the application for possession was on the ground of arrears of rent. The judgment was also wrong, his lordship held, because under s. 17 of the 1920 Act, where a person took proceedings under the Rent Acts in the High Court which could have been taken in the county court, he was not entitled to any costs, and, in spite of that, the judgment ordered the tenant to pay costs. His lordship added that if a plaintiff should choose to proceed in the High Court in spite of the discouragement in s. 17 of the 1920 Act, the High Court should be informed of the facts so that it could act accordingly. It was desirable, therefore, in actions for possession of a dwelling-house, that the endorsement of the writ should state either the reason why the house was not within the Rent Restriction Acts, or, if it was within those Acts, what was the ground on which possession was sought.

In *British Motor Trade Association* v. *Falco*, on 29th November (*The Times*, 30th November), EVERSHED, J., granted an injunction restraining the defendant from parting, without the plaintiffs' consent, with the ownership of a new motor car in less than six months' time from the date on which he had bought it. For the plaintiffs it was stated that the case was the first of its kind, and they were enforcing a covenant on all persons lucky enough to buy a new motor car. Counsel for the defendant had stated that he would submit to the order made, subject to the proviso that the plaintiffs' consent should not be unreasonably withheld. The defendant was not "a black marketeer," but the plaintiffs stated that if in any future action they were not satisfied that the defendant was not such a person, they would claim damages.

REPRESENTATION ORDERS

WE understand that serious concern is felt among those whose practice takes them into the Chancery Division, especially upon originating summonses for the construction of wills, in regard to the present position of representation orders. It frequently happens that there are known to be a number of parties having identical interests and it is suspected that there are other parties in the same interest whom full research would disclose. The old practice in these cases was to join one of the parties concerned as a defendant, and that he should instruct his counsel to argue the points which should be argued on behalf of the class of which he was one. The trustees asked that such defendant should be appointed to represent the class in question. A representation order was generally not made when the decision was wholly in favour of the class concerned, but it generally was made when the decision was, to a greater or less extent, adverse to that class, in order that the trustees of the will might safely act upon that adverse decision as affecting all members of the class. This practice was extremely convenient and the only drawback to it which was at all generally recognised was that it was impossible to obtain a representation order in respect of any unborn or unascertained persons. The case for such persons had to be put by the trustees themselves, who were thus somewhat embarrassed by multiple responsibilities. The practice described above was founded upon r. 32 of Ord. XVI of the Rules of the Supreme Court. This rule was divided into sub-rules (*a*) and (*b*), which were as follows:—

> "(*a*) In any case in which the right of an heir-at-law, customary heir or the next-of-kin or a class shall depend upon the construction which the Court or a Judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such heir-at-law, customary heir, or next-of-kin or class, and the Court or Judge shall consider that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such heir-at-law, customary heir, next-of-kin, or class shall have been ascertained by means of inquiry or otherwise, the Court or Judge may appoint some one or more persons to represent such heir-at-law, customary heir, next-of-kin, or class, and the judgment of the Court or Judge in the presence of such persons shall be binding upon the heir-at-law, customary heir, next-of-kin, or class so represented.
>
> "(*b*) In any other case in which an heir-at-law, or customary heir, or any next-of-kin or a class shall be interested in any proceedings, the Court or Judge may, if, having regard to the nature and extent of the interest of such persons or any of them, it shall appear expedient on account of the difficulty of ascertaining such persons, or in order to save expense, appoint one or more persons to represent such heir, or to represent all or any of such next-of-kin or class, and the judgment or order of the Court or Judge in the presence of the persons so appointed shall be binding upon the persons so represented."

Both these sub-rules were revoked by r. 2 of the Rules of the Supreme Court (No. 3) 1945, dated 15th August, 1945 (see [1945] W.N. (Misc.) 44), and the following rule was substituted for the whole of r. 32:—

> "Where in any proceedings concerning (*a*) the administration of an estate; (*b*) property subject to a trust, or (*c*) the construction of a written instrument (including a statute) it appears that any person (including an unborn person) or any class of persons, is or may be interested (whether presently or for any future, contingent, or unascertained interest) in or affected by the proceedings, but cannot be ascertained or cannot readily be ascertained, or, though ascertained, cannot be found, the Court or Judge may, if satisfied that it is expedient so to do, appoint one or more persons to represent such person or class, and the judgment or order of the Court or Judge in the presence of the person or persons so appointed shall be binding on the person or class so represented."

This new rule appears on the face of it designed to bring Ord. XVI, r. 32 (*a*) up-to-date. For that purpose it seems admirably drafted. On the other hand it is clear that, for whatever reason, r. 32 (*b*) has ceased to exist. The result is that in a case where there are numerous parties having the same interest, all of whom are known, it is now impossible to get a representation order under r. 32. So far as we have been able to find, no practice direction has been issued explaining what the correct practice now is in such a case.

Counsel for the plaintiff, in drafting the originating summons, seems to be faced with the choice between joining one only of each class (in which case the order can thereafter be challenged by another member of the class), or joining all the members of the class, which would involve an enormous increase in cost if the class was a numerous one, especially if all the parties concerned elected to be represented by their own separate solicitors and counsel, which appears to be their right. In the cases so far brought to our notice, the plaintiff has joined only one or two members of the class and has taken the risk; but there seems no reason why a trustee should take any such risk. In one case of which we have heard, the learned Master suggested that the matter could conveniently be dealt with by making orders under r. 9 of Ord. XVI, authorising one person to defend the proceedings on behalf of each class. In fact when application was made for this purpose the learned Master stood the whole question over until the hearing. But the learned Judge felt unable to make any order under r. 9 at the end of the hearing, which was the point when, in accordance with former practice, application for the purpose was made to him. We are not clear whether in the normal case of multiple but ascertained parties it is correct for the plaintiff by his originating summons to ask for orders under r. 9 or whether that application should be made by ordinary summons in the proceedings. Again, while it is no doubt simple for a particular person to be appointed to represent, for example, all the debenture holders in a company, it is by no means so easy for the Master, before hearing, to decide, in a complicated case for the construction of a will, who ought to be appointed to defend the proceedings on behalf of whom.

Attention was called to this matter by the writer of the "Conveyancer's Diary," in our issue of the 20th July, 1946. He there stated that he had been making inquiries in Lincoln's Inn and had found no one who professed to understand the present situation, nor could he find any explanation of the purpose of the changes made in the summer of 1945. Since that Diary was published, no fresh practice direction has been issued and we are regretfully unable to comprehend the grounds upon which the former practice, which we considered satisfactory, has been changed. Nor is there any clear indication of the way in which these matters should in future be handled. So far as we can see, the close restriction now placed upon the making of representation orders must shortly lead, when the new practice is fully worked out, to trustees, for their own protection, joining very many more persons as defendants than were necessary under the practice prevalent until August, 1945, and probably putting the estate to considerable expense upon the necessary researches and preparation of the pedigree. At a time when such drastic proposals are being made for simplifying and cheapening the processes of the Probate, Divorce and Admiralty Division, we cannot think that the changes in Chancery practice referred to above are satisfactory, or, indeed, in any way useful.

DIVORCE LAW AND PRACTICE

RECENT DECISIONS

(1) *Disappearance of the other spouse*

The subject of the effect upon the marriage bond of the disappearance of one of the parties to the marriage, and of the right which that confers upon the other spouse, was considered in *Parkinson* v. *Parkinson* [1939] P. 346 in its relation to a petition for a declaration of presumption of death and a decree dissolving the marriage. In that case a husband presented such a petition under s. 8 of the Matrimonial Causes Act, 1937, alleging that his wife was dead, and in support thereof reliance was laid upon the provisions of subs. (2) of this section, which provides that: "In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved." In this case it appeared that the husband was not able to produce evidence to show that his wife had been living or had died within that time although she had not been seen nor heard of for eight years, and the matter was further complicated by the fact that the husband and wife had been living apart since 1922 under a deed of separation and therefore, as was pointed out by Bucknill, J., as he then was, her continual absence in these circumstances proved very little. In the argument, however, reliance was placed on a previous case of *R.* v. *Faulkes* (1903), 19 T.L.R. 250, which concerned the defence to a charge of bigamy which had been brought under the Offences against the Person Act, 1861, the proviso to s. 57 of which provides that "nothing in the section shall extend to any second marriage . . . or to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past and shall not have been known by such person to be living within that time." There it had been held that the benefit of this proviso applied equally to the case of an innocent party as to the case of a man who had wilfully deserted his wife and whose absence from him for this period was due to his deserting her, and it was argued, therefore, in *Parkinson's* case that proof of the same set of facts now provided under the Act of 1937 a substantive remedy and not merely a defence to a charge of bigamy. In accepting this argument, Bucknill, J., following the construction of the corresponding wording of the previous Act, held that the existence of the deed was no bar to such a petition, and with regard to the onus that this lay upon the husband to give evidence as to whether he had no reason to believe that his wife was living within that time, and he came to the conclusion that, it being a matter of pure speculation as to whether or not the wife had been alive within that time, the court was entitled to hold that there was, in fact, no reason to believe that she had been living within that time, and he granted a decree of presumption and a decree *nisi*.

The *ratio decidendi* of this decision has now been applied in *Tweney* v. *Tweney* [1946] P. 180, where the continual absence of the husband of the petitioner by a previous marriage was relied upon, not as forming the basis of a petition for presumption of his death, but as having justified the petitioner in contracting a subsequent marriage with the respondent, which, it was submitted, was a valid marriage entitling the court, upon proof of desertion, to grant a decree. There it was held, following the earlier case of *Spurgeon* v. *Spurgeon* (1930), 46 T.L.R. 396, where the facts were similar and a decree was granted although no reasons were stated in the judgment, that in view of the lapse of time (a period of nearly twelve years, during which period exhaustive inquiries as to the husband's whereabouts had been made) between the desertion of the petitioner by her first husband and her marriage with the respondent, and as this marriage had been attended with all proper formalities and had been duly consummated, the court ought to regard the petitioner as a married women until some evidence to the contrary was given, and a decree *nisi* was granted.

It may be observed here that, had evidence been forthcoming between the granting of the decree *nisi* and its being made absolute to prove that the petitioner's first husband was in fact alive, this would presumably form the basis of an intervention by the King's Proctor to set aside the decree, as was the case in *Manser* v. *Manser* [1946] P. 224. There such an intervention was allowed after the granting of a decree for presumption of death and a dissolution of the marriage under s. 8 of the 1937 Act, *supra*, where the husband respondent to the petition was found to be still alive and the decree *nisi* was rescinded and the petition dismissed.

(2) *Validity of a marriage*

The above decision showing the tendency of the courts to act in favour of the validity of a marriage leads one to the consideration of two decisions. In the Court of Appeal, the validity was confirmed of a marriage contracted in India according to the Hindu rites notwithstanding that according to the customs and laws of the Hindu race it was a potentially polygamous marriage. In *Srini Vasan* (otherwise *Clayton*) v. *Srini Vasan* [1946] P. 67, the petitioner, a wife, sought a decree of nullity of her marriage with the respondent, who was a Hindu domiciled in India but temporarily resident in England, where it transpired that previously to this marriage he had been through a Hindu ceremony of marriage with a Hindu woman, which marriage was still subsisting. In granting a decree, Barnard, J., stated that, although the Divorce Court would not entertain a matrimonial cause for the purpose of granting relief or enforcing rights in respect of a marriage which lacked the characteristics of monogamy, yet the Hindu marriage was a marriage which would be recognised as valid by the courts so as to prevent a subsequent English monogamous marriage.

This case was followed by the same judge in that of *Baindall* (otherwise *Lawson*) v. *Baindall* [1946] P. 122, where the facts were on all fours with those in his earlier decision with the exception that it was alleged the husband was domiciled in England at the time of the marriage ceremony with the petitioner and at the time of the decree was still so domiciled; he came to the same conclusion and granted a decree, and his decision was affirmed in the Court of Appeal. It may be noted, however, that both the Master of the Rolls and Barnard, J., in their judgments regarding the Hindu marriage as valid for the purpose then before the court, did not question the correctness of the decision in *Hyde* v. *Hyde* (1866), L.R. 1 P. & D. 130, to the effect that the courts of this country only recognise, in suits by either party for the purpose of enforcing matrimonial duties or granting relief in respect of matrimonial obligations, the voluntary union for life of one man and one woman to the exclusion of all others, and will not recognise, for such a purpose, a marriage in a faith which allows polygamy. Further the Master of the Rolls desired to state that as far as he was concerned nothing that he had said must be taken as having the slightest bearing on the law of bigamy, which seemed to him a different question in which other considerations might well come into play.

(3) *Filing*

In conclusion reference may be made to two decisions which concerned the legal effect of the filing of a document, in the one case of a petition, and in the other of the document recording the decree absolute.

(A) *The presentation of a petition.*—In *Alston* v. *Alston* [1946] P. 203, the question arose before Wilmer, J., of the material date of the presentation of a petition for desertion which had been brought claiming a dissolution of the marriage under s. 2 of the Matrimonial Causes Act, 1937. There the petitioner alleged desertion by the respondent as from 17th October, 1942, and the petition was signed by him on 10th October, 1945, on which day the affidavit in support was sworn, but the petition was not filed with the court under r. 3 (i) of the Matrimonial Causes Rules, 1944, until 31st October, 1945. It was held, however, that the petition was presented when it was filed in the court, that is to say, on 31st October, at which date the statutory period of three years desertion immediately preceding the presentation of the petition had elapsed.

(B) *The recording of the decree absolute.*—In *Crossland* v. *Crossland* [1946] 2 All E.R. 91, however, the filing of the document recording a decree absolute was not considered essential to the validity of the pronouncement of the decree, but it was there held that the decree was binding and effective as from the moment when the judge in court had with his lips pronounced the decree absolute. In this case, therefore, it was held that, where an intervener had appeared to show cause why the decree *nisi* which had been pronounced in the suit should not be made absolute, his application had been made too late where he had appeared after Wallington, J., had, with his lips, pronounced the decree absolute. Although the document recording the decree was signed by the registrar at a time which in all probability was earlier than the making of the objection, yet the objection was made before the filing of the document in the Divorce Registry.

With regard to the signing of the decree, it may be noted that it is now provided by para. (i) of r. 34, which paragraph has now been substituted for the original para. (i) by r. 6 of the Matrimonial Causes (Amendment) Rules, 1946, that the registrar shall sign every decree of the court except decrees absolute of divorce or nullity of marriage, which shall be authenticated by affixing thereto the seal of the registry (see W.N., 18th May).

COMPANY LAW AND PRACTICE

NAMES OF COMPANIES—I

It not infrequently happens that the promoters of a new company wish to adopt a name which is in some respects similar to the name of an existing company or of a firm that has been carrying on business previously, and it is, therefore, of value to have some idea of the principles on which the court will restrain the use of a name by a company at the instance of another company or firm.

There is little help to be got in this matter from the Companies Act itself. By s. 17 of the Act it is provided that no company is to be registered by a name which is identical with that by which a company in existence is already registered or so nearly resembles that name as to be calculated to deceive except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires. The rest of the section is not concerned with any question of a similar nature but merely prohibits the use of certain words or the making of various suggestions by the name of a company.

This section is of little help in this matter for two reasons. The first is that even if you can persuade the registrar to register a company with a particular name, that will not prevent a plaintiff obtaining an injunction to restrain the company from carrying on business, if it is shown that the name is calculated to deceive or cause confusion. That is shown to be so by the case of *Merchant Banking Co. of London* v. *Merchants Joint Stock Bank* (1878), 9 Ch. D. 560, although in that case the injunction was refused. Jessel, M.R., in that case, apart from deciding that a plaintiff was entitled to complain of a company carrying on business under the name by which that company had been registered, summarised in his judgment what the law on this topic was apart from the statute. He said: "As the law originally stood I think that any person might use his own name for the purpose of trade . . . If John Brown sells coals, another John Brown may sell potatoes, and there is no law that I know of to prevent him from selling his potatoes under the name of John Brown . . . Again nothing can be plainer than that if the first John Brown carried on business under the name not of John Brown, but of John Brown & Co., so might the second. What the law did prevent was fraud; and it prevented not only actual fraud, that is, fraud intentionally committed, but it also prevented a man from carrying on business in such a way, whether he knew it or not, as to represent that his business was the business of another man."

This then is the main principle on which the courts will act in restraining a company from carrying on business under a particular name, and this furnishes the other reason why the subsection referred to above is not of any great assistance, for that subsection is aimed at preventing only the registration of a company by a name identical with or similar to the name

of an existing company, and it appears from the cases that the right to restrain the use of a name is the same whether the plaintiff is an existing company or an individual or firm trading under a particular name.

It is, indeed, suggested by Jessel, M.R., in *Uva Ceylon Rubber Estates, Ltd.* v. *Ouvah Ceylon Estates, Ltd.* (1910), 27 R.P.C. 753, that as a result of the statute, a greater protection is given to companies than is given to individuals, but if he meant that even after the registration of a new company a greater protection was given to an old company than to an individual, or body of individuals already in business, it is difficult to see how that view can be supported. In either case the result will depend on the general principle indicated above that a person is not to be allowed to choose a name under which to carry on business which may probably cause confusion.

Where, therefore, the name complained of is a fancy name not incorporating the name of any particular individual, the question admits of a fairly easy solution. It is a pure question of fact, namely, whether or not confusion may be caused by the use of the new company's name. This confusion which may be caused is not confined to confusion in the minds of people buying from the two companies, but may include all persons having dealings of any sort with them. In *Ewing* v. *Buttercup Margarine Co.* [1917] 2 Ch. 1, Warrington, L.J., said: " . . . it seems to me that the plaintiff has proved enough. He has proved that the defendants have adopted such a name as may lead people who have dealings with the plaintiff to believe that the defendants' business is a branch of or associated with the plaintiff's business. To induce the belief that my business is a branch of another man's business may do that other man damage in various ways. The quality of the goods I sell, the kind of business I do, the credit or otherwise which I enjoy are all things which may injure the other man who is assumed wrongly to be associated with me."

The effect of this is in certain cases that it will still be held liable to cause confusion where the business intended to be carried on by the new company is not in fact the same as that carried on by the plaintiff. In the *Buttercup* case the plaintiff was a wholesale and retail provision merchant and his business was known as the Buttercup Dairy Co., or popularly "the Buttercup." The intention of the new company was to manufacture margarine by a secret process and trade wholesale in it, but, nevertheless, it was held that confusion was likely to result if it did so in the name of the Buttercup Margarine Co., Ltd. Such confusion does not have to be the necessary result of the new company using the particular name, it is sufficient if it is the probable result or even apparently if it is reasonably possible.

If, therefore, one is advising a new company as to whether it is entitled to trade under its name, and that name is an invented name not containing the names of any individuals who may have acquired some right to the use of the names, and one thinks that it is reasonably possible that confusion may arise in the minds of any persons having dealings with the company or the intending plaintiff, it will be necessary to advise the new company to change its name. If it does not, it will almost certainly be restrained from trading under it.

The question is a rather more difficult one where the name of the new company incorporates the name of some person connected with the company. In *Turton* v. *Turton* (1889), 42 Ch. D. 128, the plaintiffs had for many years carried on the business of steel manufacturers under the name of Thomas Turton & Sons, and the defendant John Turton had for many years carried on a similar business under the name, first of John Turton, and then as John Turton & Co. He subsequently took his two sons into partnership and carried on business as John Turton & Sons, and it was held by the Court of Appeal that he was entitled to do this. It was thought that the similarity of the names would probably occasion some confusion, but that John Turton was entitled to state by way of the name in which he carried on business the fact that he was carrying on business in partnership with his sons. In his judgment, Lord Esher, M.R., said: "Now it is said that the plaintiffs have a trade name and a property in that name. I doubt about property though they have this right: that no man shall wrongfully interfere with that name. But they have no right to say that a man may not rightly use his own name. I cannot conceive that the law is such."

That case concerned not companies but two partnerships, but there can be no doubt but that the similar rule will apply in the case of a company whose name correctly states the facts. If, in either case, any attempt to take an advantage from the similarity of names could be shown, or it could be shown that the particular name has been adopted by the later individual or company with a view to getting some such advantage, the later individual or company would not be allowed to trade under that name even if it was an exactly accurate statement of fact. Dealing with this point in the first case referred to above, Jessel, M.R., said: "Now what I conceive would in a case of this kind amount to very clear evidence indeed of such an intention" (i.e., an intention to appropriate the plaintiff's business) "would be where a man, say of the name of Coutts, took a house in the Strand and put up over the door 'Coutts & Co.' I should have no hesitation, upon those facts, in saying that he intended to attempt to appropriate the business of Messrs. Coutts & Co." This must, of course, have been subject to the implied qualification that the business he was carrying on was not obviously different from that carried on by Coutts & Co., e.g., that of a fishmonger.

Similarly, in *British Vacuum Cleaner Co., Ltd.* v. *New Vacuum Cleaner Co. Ltd.* [1907] 2 Ch. 312, it was held that the expression "vacuum cleaner" in the defendant company's name was merely a statement of fact of the articles in which the company traded, and even if confusion was likely to result, they were entitled to trade under that name.

I shall have to conclude consideration of this topic next week when I propose to examine how far the "statement of fact" principle laid down in *Turton* v. *Turton* can be carried in entitling a company to trade under a name which may probably cause confusion.

A CONVEYANCER'S DIARY

INTERMEDIATE INCOME

I POINTED out last week that the statutory power of maintenance only applies to contingent interests when they carry intermediate income. The question whether a gift does carry intermediate income is basically one of construction, in the sense that the testator can do as he likes on the point, and that some testators make their instructions clear from their language. Unfortunately, however, wills are by no means always as explicit as one would wish, and some rather complicated rules on the subject have been evolved to meet cases where the intention is not directly stated. These rules have been modified to a considerable extent by s. 175 of the Law of Property Act as regards dispositions in wills coming into operation after 1925. I shall first consider the matter apart from statute.

A contingent residuary gift of personalty has always *prima facie* carried intermediate income, but a similar gift of realty *prima facie* did not. If such a gift was of a compound fund of realty and personalty, the rule as to personalty *prima facie* applied, even if there was not a direction to sell so as to create a mixed fund in the strict sense. This rule was sometimes known as the rule in *Genery* v. *Fitzgerald* (1822), Jac. 468. The position was clearly stated by Chitty, J., in *Re Burton's Will* [1892] 2 Ch. 38, at p. 44: "The rule (in *Genery* v. *Fitzgerald*) is, that if realty and personalty are blended in a future residuary gift, though the fund may not be directed to be sold, so as to create a mixed fund, the intermediate profits will pass. The rule was applied, and as I think rightly, by Pearson, J., in *Re Dumble* (1883), 23 Ch. D. 360, where the

realty and personalty were not blended together, but were given in separate clauses, the trusts declared being substantially identical. The rule is founded on intention. Where, in the same gift, the testator includes realty and personalty, the intention is taken to be that the income as a whole shall follow the destination of the income of the personalty and not of the realty. Why? Because the doctrine as to realty, founded as it is on feudal principles, is considered to be technical and artificial, and the mere blending of realty and personalty together is considered to be sufficient ground for excluding it."

Such were the rules concerning gifts of residue. Those dealing with devises or legacies otherwise than of residue, be they general or specific, were somewhat different. No such disposition carried intermediate income unless one or other of three requisites was fulfilled. Income was included in the gift if an express or implied intention was to be found in the will that income was to be applied for maintenance: so it was also if the testator was the father of or was *in loco parentis* to the beneficiary. Income was also included if the gift was to be set aside at once.

The first of these propositions may be illustrated by *Re Churchill* [1909] 2 Ch. 431. The testatrix gave her residuary real and personal estate on trust for conversion and for payment out of the proceeds of a legacy of £200 to her grand-nephew, contingently on his attaining the age of twenty-one years. She added a provision that " I empower the trustees at their discretion to apply the whole or any part of the share to which any beneficiary hereunder may be contingently entitled in or towards the advancement in life or otherwise for the benefit of such beneficiary whether male or female and whether under the age of twenty-one years or not." Warrington, J., stated that if the power had merely been one of advancement there would have been no sufficient indication that the gift carried intermediate income; but he held that the provision for application for the " benefit " of the legatee amounted to a power of maintenance as distinct from one of advancement, and that its presence justified the court in saying that the gift carried intermediate income. Such an inference is, however, rebutted by the presence in the will of another provision for the maintenance of the legatee. Thus, in *Re West* [1913] 2 Ch. 345, the provisions of the will were indistinguishable from those in *Re Churchill* except that the testatrix also gave the infant legatee certain vested gifts, which were obviously available for maintenance. On this ground Warrington, J., distinguished *Re Churchill*, and held that the contingent legacy did not carry intermediate income.

As regards the branch of the rule which relates to gifts by a testator having parental responsibilities to the legatee, the position is that intermediate income passes if the testator is the father (but not if the testatrix is the mother) of the legatee, or if the testator or testatrix was at the time of his or her death actually maintaining the legatee or otherwise standing *in loco parentis* to him (*Re Eyre* [1917] 1 Ch. 351, *per* Younger, J., at p. 356).

The third case in which intermediate income passes is if the legacy is forthwith to be set aside. A recent example of the application of this rule is *Re Pollock* [1943] Ch. 338, where the testator gave £10,000 " to my trustees . . . upon trust for my said son . . . if he shall attain the age of twenty-five years absolutely, but if he shall die under that age then I direct that the same shall fall into and form part of my residuary estate." For reasons which I confess that I do not entirely follow, Bennett, J., refused to accept an invitation to say that intermediate income passed to the legatee as from the testator's death, the testator being the legatee's father, but held that, the legacy being to trustees, it did carry income on the ground that it was to be segregated from the estate generally. But the date of segregation was the end of the executor's year, so that interest ran from then and not from the death.

As Bennett, J., remarked in *Re Pollock*, at p. 340, " the rules with regard to the payment of income on pecuniary legacies are technical." They are unaltered by s. 175 of the Law of Property Act, which, however, alters the rules applying to contingent interests of all other sorts. It is as follows: " A contingent or future specific devise or bequest of property, whether real or personal, and a contingent residuary devise of freehold land, and a specific or residuary devise of freehold land to trustees upon trust for persons whose interests are contingent or executory shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the death of the testator, except so far as such income, or any part thereof, may be otherwise expressly disposed of." The effect of this enactment is that (apart from express contrary provision) every *residuary* gift, real, personal or mixed, now carries intermediate income, and so does every *specific* gift. But the change does not extend to pecuniary legacies, to which the old rules still apply (*Re Raine* [1929] 1 Ch. 716).

CRIMINAL LAW AND PRACTICE

SEPARATE TRIAL OF OFFENCES

MANY of the most difficult choices that an advocate has to make in practice depend as much on knowledge of the law as on experience of similar situations in the past and on a wise use of his discretion. A case in point is the question of separate trials for separate offences, which is always very perplexing to the young advocate. For example, a dozen charges of the same offence alleged to have been committed at different times may, though each is only thinly supported by evidence, if all are tried at the same time, lead to conviction by their mere cumulative effect.

It is provided in s. 5 (3) of the Indictments Act, 1915, that " when, before trial, or at any stage of a trial, the court is of opinion that a person accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in an indictment, the court may order a separate trial of any count or counts of such indictment."

In *R.* v. *Grondowski* (1946), 175 L.T. 32, it was held that that section confers a discretion on the judge with which the Court of Criminal Appeal will not interfere unless it sees that justice has not been done.

In *R.* v. *Sims* (1946), 175 L.T. 72, another aspect of the same matter was opened up. There an indictment containing ten counts alleged three counts of sodomy with three different men, three of gross indecency with the same men, three counts of indecent assaults on three different boys, and one alleging gross indecency with a fourth man. Defence counsel applied for separate trials in respect of each man or boy involved. The court refused the application so far as the four men were concerned, and he was found guilty of sodomy with three men, but not guilty of gross indecency with the fourth.

The appellant's argument was that justice was not done at his trial, because on his trial on the counts in respect of one man, evidence of offences in respect of the other men would not be admissible. The court held that that in itself was not a ground for separate trials, because often the matter could be made clear in the summing up without prejudice to the prisoner.

In such a case, however, the court thought that it was too much to expect of a jury that it would disregard the evidence on the other charges when considering one charge. If such evidence was inadmissible, the prejudice created by it would be too great for any direction to overcome.

The judgment in that case was most interesting, because Lord Goddard examined the origin, reasons and limits of the rule that evidence of bad character is irrelevant and inadmissible, except to rebut evidence of good character given by the accused, or in answer to an attack on the character of the prosecution's witnesses. The view of the court as to its limits is most important. Lord Goddard said: " In our opinion it does not extend further than the interests of justice demand. Evidence is not to be excluded merely because it tends to show the accused to be of a bad disposition, but only if it shows nothing more." There are many cases, he went on, where it does show something more, e.g., evidence of a series of acts in order to prove design and rebut accident or inadvertence (*Makin* v. *A.-G. for New South Wales* [1894] A.C. 57, at p. 65), or to show the nature of an act (*R.* v. *Ball* [1911] A.C. 47), or to show the identity of the accused, or to show the possession of articles bearing some relation to the crime charged, e.g., possession of the apparatus of an abortionist on a charge of illegal abortion, or photographs to show a propensity to unnatural practices (*R.* v. *Twiss* [1918] 2 K.B. 853, and *R.* v. *Gillingham* (1940), 162 L.T. 16). On this principle the court held that on the trial of one of the counts, the evidence on the others would be admissible. " A perverted lust . . . not only takes them out of the class of ordinary men gone wrong, but stamps them with the hall-mark of a specialised and extraordinary class as much as if they carried on their bodies some physical peculiarity " (*per* Lord Sumner in *Thompson* v. *R.* [1918] A.C., at p. 235). On this account the court held that repetition of the acts was a specific feature connecting the prisoner with the crime, so that evidence of other similar acts was admissible to show the nature of the act done by the accused. " The probative force of all the acts together is greater than one alone; for, whereas the jury might think that one man might be telling an untruth, three or four are hardly likely to tell the same untruth unless they were conspiring together."

It is not necessary to give any further consideration to the previous authorities examined by the court except to say that in so far as *R.* v. *Bailey* [1924] 2 K.B. 300 and *R.* v. *Southern* (1929), 142 L.T. 383, may be inconsistent with the present decision, they were expressly disapproved.

The same principle as to separate trial applies to misdemeanours, as to felonies, and the same rule applies in all courts and to all classes of offences, whether indictable or otherwise. It was long before the Indictments Act, 1915, when Lord Blackburn said that, where it was unfair to a man to bring him for trial for several matters at once, e.g., because that would be attempting to bring up a man's bad character against him, the judge would in his discretion grant an application to try only one offence at a time (*Castro* v. *R.* (1881), 6 App. Cas. 229, at p. 244). There may also be other reasons why a separate trial of each offence is desirable, e.g., where evidence on one charge is not admissible on another charge, and the evidence should be kept separate (*R.* v. *Norman* [1915] 1 K.B. 341). In *R.* v. *King* [1897] 1 Q.B. 214, Hawkins, J., thought it a scandal that a man should have to face an indictment consisting of forty counts of obtaining goods by false pretences and hardly fair " for it is almost impossible that he should not be greviously prejudiced as regards each one of the charges by the evidence which is given on the others " (p. 216).

Lord Goddard started his argument from the general proposition that all evidence that is logically probative is admissible unless excluded, and that in this case the evidence could only be excluded if it went to character alone. The evidence of other similar offences which it was desired to exclude, in Lord Goddard's opinion, went not merely to character, but had logically probative value, in that repetition of the act in question was itself " a specific feature connecting the prisoner with the crime," and was, therefore, admissible to show the nature of the act charged, irrespective of whether the defence was raised that the act was due to inadvertence or some other similar cause.

The strength of this argument is undoubted, and it lays down the present law. One cannot help feeling, however, that the court, in laying down this rule, drew a line which is to a large extent arbitrary? Why should it not apply to other crimes than those which are sexual? There is surely more than one kind of dog which habitually returns to his vomit. So long as the rule laid down by Lord Goddard is strictly confined to cases in which several charges of the same type of sexual offence are made, there is no danger of injustice. But the result of a wide interpretation of the broad terms in which Lord Goddard laid down the law in *R.* v. *Sims*, is that there is some risk that damage may be done to that fairest of English principles of justice, that every man, whatever his character may be, whether it is good, bad or indifferent, is entitled to equal rights of fair trial in the courts of the land.

TO-DAY AND YESTERDAY

December 2.—On 2nd December, 1772, Andrew Hudleston, who had been two years a Bencher of Gray's Inn, was admitted to vote in Pension. He came of an old Cumberland family which had had connection with the Inn since the middle of the seventeenth century. He was Treasurer in 1775 and 1797, and in 1790 he was granted the resident bencher's chambers at 2 Coney Court (now Gray's Inn Square). The Victorian judge of this name was no connection with this family.

December 3.—On 3rd December, 1777 " was tried before Lord Mansfield in the Court of King's Bench a remarkable cause, the first of its kind, *Cabrier* v. *Anderson*, for putting his, Cabrier's, name to five watches made by the defendant and thereby hurting the reputation of the plaintiff. A verdict was given for £100, being £20 for each watch, agreeable to an Act of Parliament of William III."

December 4.—On 4th December, 1781, a committee of the Gray's Inn Benchers ordered a new seal to replace " the old one which is lost and is worn out." It ordered that the wine merchants, Messrs. Stainforth & Giborne, be paid in full and that some old hock and sherry be bought. " Amitage, the gardener, now in prison for debt " was to be dismissed.

December 5.—John Smith, son of a Yorkshire farmer, worked for a London tradesman, went to sea in a merchantman, saw active service in the Royal Navy and then enlisted in the Guards. After that he turned housebreaker. On 5th December, 1705, he was arraigned at the Old Bailey, convicted and condemned to death. He was duly hanged at Tyburn, but when he had been suspended for nearly fifteen minutes a reprieve arrived and after being cut down he was restored to life. Describing his sensations, he said that when he was turned off he was at first in great pain " and felt his spirits in a strange commotion, violently pressing upwards "; he then saw a great blaze of glaring light which seemed to go out of his eyes with a flash and then he lost all sense of pain. As he recovered consciousness, the pricking and shooting he felt caused him such intolerable pain that he wished he had not been cut down. Ever afterwards he was called " Half-hanged Smith." Undeterred by this experience, he was later tried for a housebreaking but escaped conviction on a point of law. Another time he was arrested for a further offence but the prosecutor died before the date of trial and he escaped again. After that no more is heard of him.

December 6.—On 6th December, 1807, the future Lord Campbell wrote to his brother that he had just signed a contract to report the cases determined at Nisi Prius. " A barrister yclept Espinasse has reported the cases hitherto but, particularly of late, in a very negligent and slovenly style. I was in hopes he would have given up to me; however, he says he shall go on. I shall certainly beat him." He adds: " I was startled a good deal by the words ' reports ' and ' reporter ' but in fact, to collect and publish the decisions of the judges is an extremely reputable task and has been performed either by barristers or the judges themselves."

December 7.—On 7th December, 1781, a committee of the Gray's Inn Benchers ordered the plate and linen to be brought up into the room next the Pension Chamber and kept there for the future. The Pension Room was at this time, and had been for ten years past, in the south set of chambers on the first floor of 1 Coney Court, but in 1788 it was moved to the ground floor

of the building between the Hall and the Chapel. Earlier in the eighteenth century the Benchers used to meet in the Library.

December 8.—On 8th December, 1739, Nicholas Ridley, elected a Bencher of Gray's Inn the previous year, was appointed Dean of the Chapel. He was Treasurer in 1792.

IN THE JURY ROOM

Since writing my recent note of doings in the jury room I have come across an authentic account of the adventures of a jury in the Borough Court at Southampton just a hundred years ago. Their retiring room was a comfortless dungeon-like chamber in the Guildhall with narrow windows looking out over the Above Bar side of the archway. Two of their number found themselves in hopeless disagreement with the other ten. The majority evinced "anything but gentle persuasiveness" so that they almost came to blows. Evening brought cold and darkness, for it was November, but the under-sheriff would not discharge them. Two of the jury were undertakers and word came to them from their workmen who had finished two coffins but did not know where to deliver them. The town sergeant brought the messages but declined to take back any answers. Others of the jury were considerable employers of labour and knew that, as it was Saturday night, their men must be waiting for their week's wages. They too were unable to send out any messages. Some of the jury began to relieve their feelings by throwing the chairs about. Others got into conversation through the window with the crowd before the Bar Gate, complaining of this locking up of respectable citizens worse than felons. One juror was taken seriously ill with the spasms and a doctor, who was admitted, pronounced it dangerous to keep him any longer without refreshment. Called into court, they declared that there was no prospect of any agreement and protested strongly at being ordered back to confinement. They showed so much fight that the under-sheriff compromised, promising not to lock the door if they would go back to their room. It was after this that the attorneys on both sides consented to their discharge and the wretched jurymen were released at two on Sunday morning, having been ten hours without fire, food, drink or light, as the law prescribed.

NEW SQUARE

The shaking which New Square, Lincoln's Inn, suffered during the great bombardment has apparently left some parts of it rather tottery, and problems of partial rebuilding may arise. As it is one of the dwindling number of perfect seventeenth and eighteenth century squares left in London, it is a matter of general as well as domestic interest that restoration and not plunging innovation should be the key-note when the work is undertaken. The injudicious mid-Victorian demolitions and reconstructions foisted on the Inn by the all too forceful personality of Lord Grimthorpe have fallen sufficiently into disfavour to act as a warning, while the fairly recent restoration of the old Hall stands in striking contrast as a good deed and a good example. The plan to build the square round part of Fickett's Field belongs to the late seventeenth century, but all of it is not original. How many people can say offhand or can detect by examination which of the houses are of later date? In fact Nos. 10 and 11 were rebuilt after a fire in 1752 and No. 2 was rebuilt after a fire in 1849. Let none say that it is impossible or artistically unsatisfactory to reproduce a style of architecture. One danger we are probably spared. A late Victorian writer was extremely anxious to demolish the south side of the square and lay bare a prospect of the back of the Law Courts. We are rather less proud of the Law Courts now and would hardly regard this as a "much desired improvement" One thing has vanished from the Square and it is a pity—the Corinthian column designed by Inigo Jones with a sundial above and, at the angles of the pedestal, infant tritons spouting water from shells. The fountain had run dry in 1811 and in 1817 the column disappeared. Appropriately in the dawning age of utility and progress "a gas lamp of insignificant appearance was set up on the spot."

"APPEALS" WHICH SHOULD NOT BE DISMISSED

FOR many years up to the outbreak of war in 1939 it was our practice to call attention shortly before the Christmas season to the various appeals for support made by charitable organisations. In the hope that past appeals have met with success, we now return to our pre-war practice of setting out details of a few of the many deserving causes.

It is an inevitable aftermath of war that many of the fighting men and women who have been injured continue to need great care and skilled attention. The conflict that ended last year has left many broken in mind and body, to whom must be added those who were the victims of aerial warfare.

The many organisations caring for these men, women and also children ask, at this season of the year, that the more fortunate amongst us should not only think of them but, in a practical way, assist them by our support. Such aid will not only help to brighten their Christmas but will also be the means of assisting many of them on their journey back to a normal life.

The British Legion Appeal (Haig's Fund) is, of course, known throughout the world, and the recent Poppy Day Appeal saw a remarkable response, not only from Britain, but from overseas. Their work, however, is not confined to the Armistice period but continues throughout each year.

For the blind the name of St. Dunstan's is a household word, and loss of sight is one of the most grievous of war's disabilities. The National Library for the Blind is also doing invaluable work in helping materially to maintain the spirit of fortitude which for so long has been associated with blindness.

Loss of limbs is another great field where help by way of financial aid literally puts men and women back on their feet. The present-day marvels in this direction (the name of Douglas Bader springs quickly to mind) show the immense benefits that are being made available. The British Limbless Ex-Servicemen's Association are appealing for donations and legacies to help in their work of providing welfare and employment.

The Star and Garter Home for Disabled Sailors, Soldiers and Airmen is a permanent institution for the treatment of disabled personnel. These men who helped to defeat our enemies in two world wars should not be forgotten.

For distributing grants to all Royal and Merchant Navy Societies, King George's Fund for Sailors is the central pool recognised by the Admiralty and any bequests will be appreciated. The men of the merchant and fishing fleets and their dependants are cared for by the Shipwrecked Mariners' Society, whose Secretary would welcome Christmas gifts.

The work of the Salvation Army, the Church Army and the British Red Cross Society goes on in war and peace. The help these great charitable organisations gave to service men and women during the war is now largely devoted to the ever-widening needs of peace.

The scourge of cancer remains one of the biggest problems for medical science to overcome, and in addition to the need for funds to care for existing patients, more and more assistance is necessary for research. The Royal Cancer Hospital (Free) not only cares for patients, but carries on a research institute with a trained scientific staff. Operating a fund that assists 900 poor sufferers each year, the National Society for Cancer Relief appeals for unneeded wealth. The Imperial Cancer Research Fund and the British Empire Cancer Campaign are both devoted to the constant search for greater knowledge of this dread disease and would welcome additional aid for their scientific campaigns.

In requesting aid for the big London Hospitals—Guy's, Bart's, St. Thomas's, the Westminster, to name only a few—it must be remembered that all now suffer the additional burden of extensive war damage, an added drain on resources. The central fund operating for all London voluntary hospitals is the King Edward's Hospital Fund for London, to whom gifts and donations should be sent. Brompton Hospital, instituted in 1841, may be mentioned as probably the leading centre for the treatment of consumption. With its modern sanatorium at Frimley, Surrey, it has 500 beds constantly occupied. The National Hospital (Queen Square) dealing with all diseases of the nervous system can also be mentioned, and the Treasurer, the Rt. Hon. Lord McGowan, would be grateful for donations.

Recent press publicity has brought home forcibly the debt owing to many fine organisations devoted to the needs of the young. Dr. Barnardo's Homes have already benefited over 134,000 children and 7,500 are constantly maintained. In its vital task of healing and care, the Hospital for Sick Children, of Great Ormond Street, appeals for assistance. Better known under its former title of Waifs and Strays, the Church of England Children's Society has over 5,000 youngsters in its care. A gift, no matter how small, will help to swell their stockings this Christmas.

Established in 1813, Reed's School provides a secondary boarding school education for fatherless boys and girls, and desires subscriptions and donations to help meet the annual cost of about £30,000.

Spurgeon's Orphans' Homes, at Reigate and Birchington-on-Sea, and the Shaftesbury Society, which has been working among the poor children of London for over a century, both need help to enable them to continue their work.

Cruelty to children should be something quite unknown in this year of 1946. But there is no reduction in the amount of work for the National Society for the Prevention of Cruelty to Children and in 1945 over 100,000 children needed their assistance.

Miss Smallwood's Society for the Assistance of Ladies in Reduced Circumstances celebrated its Diamond Jubilee this year and appeals for a special Christmas gift. Urgently needing funds is the Distressed Gentlefolks' Aid Association to enable the grants made to 400 old and infirm persons to be maintained. At Streatham the British Home for Incurables finds increased cost a heavy burden, and assistance is asked for in its vital work.

The deaf and dumb among our community have two excellent organisations working for their welfare and happiness. The Royal Association in aid of the Deaf and Dumb working in London and surrounding areas, and the National Institute of the Deaf, doing so much good work in making life easier for thousands of afflicted citizens, both appeal for gifts and legacies.

The care and treatment and the prevention of ill-treatment to animals is work of considerable importance, and the appeals of such splendid concerns as the Royal Society for the Prevention of Cruelty to Animals and the National Canine Defence League are deserving of consideration. Sick animals are the especial concern of the People's Dispensary for Sick Animals of the Poor (Inc.) and all treatment given is free. At Westcroft Stables, Boreham Wood, is an established Home of Rest for Horses, and bequests are appealed for.

The National Association of Discharged Prisoners' Aid Societies (Incorporated) requires assistance in its work for the aid it provides to discharged prisoners.

Gifts are urgently required by the British and Foreign Bible Society, whose work of distribution was so severely hampered during the war years.

The legal profession is also asked to consider those organisations directly devoted to their fellow members, and of these the Solicitors' Benevolent Association and the Law Association would welcome any assistance from readers of this journal.

We hope that this brief review of the work of many wonderful charitable organisations—obviously only very few have been mentioned—will assist our readers who desire at this period of the year to contribute to the happiness and welfare of those for whom these appeals are made. All help, however small, will be welcomed.

COUNTY COURT LETTER

Repairs to Motor Car

In *James Fryer, Ltd.* v. *Holbrook*, at Hereford County Court, the claim was for £5 5s. in respect of work done to a motor car. The plaintiffs' case was that the defendant took a car to their garage, where it was found that a new crown wheel was required. The spare part could not be obtained, and the defendant took the car away after it had been reassembled by the plaintiffs. The defendant denied liability, on the grounds that the car was the property of his daughter, and the plaintiffs had not carried out any repairs. His Honour Judge Langman gave judgment for the plaintiffs, with costs.

Possession of Cottage

In *Mainwaring* v. *Compton*, at Ludlow County Court, the claim was for possession of a cottage. The plaintiff's case was that in July, 1946, he bought some property, including the cottage, with vacant possession. The previous owner had given the defendant notice to quit, but he was allowed to remain in possession on the understanding that he would work for the plaintiff. The defendant, however, had taken work elsewhere. The cottage was required for another workman. The defendant's case was that the offer of permanent employment was conditional upon his vacating the cottage. He accordingly took up work elsewhere. His Honour Judge Samuel, K.C., made an order for possession in two months.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal]

Legal Education of Unadmitted Clerks

Sir,—With reference to the paragraph in your issue of 30th November, under the above heading, I am sure you will be interested to know that the Liverpool Law Clerks' Society has been providing such courses of lectures for the past forty years. This session's programme was printed in your issue dated 19th October last.

In Liverpool it has therefore been unnecessary for the local Law Society to arrange lectures for unadmitted clerks, but the president of that society for the current year has for many years past also been appointed president of this society.

The present honorary secretary, Mr. D. R. Middleton, was the organising secretary of the society in 1903 and he is still active and enthusiastic.

Liverpool. J. Hughes.

Accountant's Certificate Rules

Sir,—" Learner " says in his letter published in your issue of the 30th November that he would be interested to know why footnote (*g*) to the form of accountant's certificate contained in the schedule to the Accountant's Certificate Rules, 1946, states that " one or other or both " of the sub-paragraphs of para. 2 (1) must be deleted, and he inquires whether there may not be cases where there are both trivial breaches of the rules which were rectified, and serious breaches required to be set out on the back of the form. There may certainly be cases where there are both trivial and serious breaches of the rule, and it is for that reason that the footnote is worded as it is, because where serious breaches of the rules are disclosed, the Council of The Law Society will no doubt have to investigate the accounts of the solicitor with a view possibly to the institution of disciplinary proceedings, and it is important in those cases that they should have at their disposal the fullest possible information as to all breaches of the rule, whether trivial or serious, which the accountant employed by the solicitor has discovered in the process of his inspection.

" Learner " also inquires why there is excluded from the power vested in the Council under r. 12 to waive any of the provisions of the rules, power to waive the provisions of para. (2) of r. 3. The reason is that the Council do not feel that they would be justified in reserving a right to dispense, for example, with inviting an accountant to give an explanation or make observations before they notified him under para. 2 of r. 3 that he was not qualified to give an accountant's certificate.

I cannot help feeling, from the obvious care with which " Learner " has studied the Accountant's Certificate Rules, that he has done himself less than justice in the choice of his nom de plume.

T. G. Lund,

Law Society's Hall, W.C.2. *Secretary.*

REVIEW

Criminal Days. Recollections and Reflections of Travers Humphreys. 1946. London: Hodder & Stoughton, Ltd. 10s. 6d. net.

Everyone ought to write his recollections, some record of things vanished which he has seen or of things forgotten which he alone remembers. Something is lost for ever even when an old account book is pulped and history is a puzzle of which most of the pieces are missing. Therefore, this record must be welcome, with its lively picture of a departed legal world and its incidental glimpses of the life of the late Victorian middle classes. Still, one cannot altogether repress a doubt whether it should not have been reserved till the author's working life was over and his relaxation had begun, since personal reflections, comparisons and judgments cannot but in some degree break in upon that sense of aloofness, that atmosphere of passionless detachment to which the administration of British justice aspires. That is matter for debate. What is certain is that in these pages forgotten figures rise again in their habit as they lived, that there are many illuminating sidelights on the great trials in which the author was concerned and that the book abounds in good stories, at least three of which made the present writer laugh aloud. Naturally, not all the author's conclusions will appeal to all his readers. Perhaps he is rather less than generous to Roger Casement, which character, after all, had many attractive aspects brought out in a fairly recent book by the late Judge Artemus Jones. Incidentally, as an example of F. E. Smith's eccentricities, it is interesting to learn that he cabled to America for publication his yet undelivered opening speech for the prosecution in Casement's case. His juniors afterwards advised him that it contained matter which could not be proved in evidence. It is fair to add that the author expresses a high regard for the memory of " F. E." One final criticism, in a book which contains so many good things, the absence of an index is a sad trial to the reader who would re-read.

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

Kelani Valley Motor Transit Co., Ltd. *v.* Colombo-Ratnapura Omnibus Co., Ltd.

Lord Wright, Lord du Parcq and Sir John Beaumont
7th May, 1946

Road traffic (Ceylon)—Omnibus company—Road service licence—Qualification by reference to number of existing licences held for "route"—Omnibuses covering route in course of longer journey—Motor Car Ordinance (No. 45 of 1938)—Omnibus Service Licensing Ordinance (No. 47 of 1942), Sched. I, para. 1.

Appeal by special leave from a decision of the Supreme Court of Ceylon, reversing a majority decision of the Tribunal of Appeal set up under the Motor Car Ordinance, 1938, of Ceylon, affirming an order of the Commissioner of Motor Transport granting the appellants (the Kelani company) an exclusive road-service licence for the route from Colombo to Ratnapura.

The scheme of the Ordinance of 1938, so far as relevant, was to license particular omnibuses to be used on specified routes. That system having led to undesirable competition, the Omnibus Service Licensing Ordinance, 1942, was passed introducing a system of licensing particular routes and assigning each route to a particular owner. The First Schedule to the Ordinance of 1942 laid down the order of preference to be observed by the Commissioner of Motor Transport in considering applications for road-service licences. The second preference, which alone was relevant to the case, was "an application from a company . . . comprising the holders of the majority of the licences" "authorising the use of omnibuses on" the route concerned "or . . . substantially the same . . . route." The Kelani company and the Colombo-Ratnapura company each claimed to be the holders of the majority of the licences for the route Colombo-Ratnapura and so to be eligible under the second preference in the schedule, there being no claimant under the first preference. The Kelani company operated a number of omnibuses between two termini respectively beyond Colombo on the one hand and beyond Ratnapura on the other, those omnibuses passing both places on the way between their two termini. If such omnibuses were to be taken into account, the Kelani company were entitled to the preference based on the number of licences for the route Colombo-Ratnapura. If they might not be taken into account, the Colombo-Ratnapura company were entitled to the preference on the same ground. Their lordships took time.

Sir JOHN BEAUMONT, delivering the judgment of the Board, said that the difference of opinion between the expert authorities in Ceylon showed that the question at issue was not free from doubt, but it lay within a narrow compass. Could the Kelani company take into account, in order to win the preference, the licences for omnibuses which admittedly plied between Colombo and Ratnapura but between termini beyond each? Since the one terminus lay sixteen miles beyond Colombo and the other eighty miles beyond Ratnapura, Colombo and Ratnapura being themselves only fifty miles apart, the route between those two termini was obviously not substantially the same as that between Colombo and Ratnapura. That was not the Kelani company's case. Their contention was that the licence to use omnibuses on the longer route was a licence to use it on the Colombo-Ratnapura route since the shorter route was covered in operating the longer. If "route" had the same meaning as "highway" in the Ordinances, the argument would prevail, but, in their lordships' opinion, the two terms could not be held synonymous. It was of the essence of a route for which a licence was granted that it should run from one terminus to another. That would ensure a service between the two termini, and might also provide, though with less certainty, a service for the use of intermediate places. But theoretically, at any rate, an omnibus running along the longer route might be full when it reached Colombo or Ratnapura, and would not necessarily provide a service for either of those places. The appeal must be dismissed.

COUNSEL: *Pritt*, K.C., and *de Zoysa*, for the Kelani company; *de Silva*, K.C., and *Handoo* for the Colombo-Ratnapura company.

SOLICITORS: *Buckeridge & Braune; A. L. Bryden & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

Wassell *v.* West Cannock Colliery Co., Ltd.

Morton, Somervell and Asquith, L.JJ.
16th October, 1946

Master and servant—Essential work—Employer's rearrangement of duties—Head fireman's refusal to work as ordinary fireman—Claim for wages—Essential Work (Coalmining Industry) Order, 1943 (S.R. & O., 1943, No. 505), art. 4 (1) (d).

Appeal from a decision of Judge Finnemore, sitting at Walsall County Court.

In June, 1935, the plaintiff was appointed a fireman in the defendant company's undertaking, which was an undertaking scheduled under the Essential Work (Coalmining Industry) Order, 1943. Having carried out the usual fireman's duties until 19th November, 1942, he was on that date appointed head fireman, in which capacity he performed many of the duties of an ordinary fireman, but had two other firemen under his supervision. In other respects, also, the conditions of employment of a head fireman differed from those of an ordinary fireman, and, as found by the county court judge, the grade of head fireman was recognised as a grade in the defendants' undertaking. The defendants' manager having, with a view to economising man-power, made arrangements which would only necessitate, for the future, the employment of two ordinary firemen, he proposed that the plaintiff should be one of those firemen and thus no longer a head fireman. An offer to that effect was made to the plaintiff by the defendants on 18th July, 1945, on his return from a holiday, and was refused, and he did not resume work for the defendants. On 25th September, 1945, they applied to a national service officer for permission to determine his employment as he had not presented himself for work since 18th July. Permission was refused on the 24th October, and the plaintiff continued to remain at home. On 12th January, 1946, he claimed full wages as a head fireman from 18th July, 1945, to 11th January, 1946, except for a period during which he had been ill. The county court judge found that work as a head fireman was not available for the plaintiff during the material time; that the defendants had reasonably asked him to do other work, and that he had refused; and that the plaintiff was "capable of and available for work" within the meaning of art. 4 (1) (*d*) of the Order of 1943, notwithstanding that he had refused to do the work offered. He held him to be entitled to £148 14s. 6d., the amount of wages claimed. The defendants appealed. By art. 4 (1) of the Order of 1943 ". . . where a person carries on a scheduled undertaking . . . (*a*) the person" carrying it on "shall not terminate (except for serious misconduct) the employment in the undertaking of any person employed therein or without terminating such employment cause him to give his services in some other undertaking . . . except with the permission in writing of a national service officer . . . (*d*) . . . the person carrying on the undertaking shall in respect of every week pay to every person employed in the undertaking . . . the sum which is not less than the guaranteed wage for that week if that person is during his normal working hours—(i) capable of and available for work, and (ii) willing to perform any services outside his usual occupation which in the circumstances he can reasonably be asked to perform during any period when work is not available for him in his usual occupation in the undertaking."

MORTON, L.J., said that there was no evidence that the plaintiff had offered to work as a fireman if still paid the wages of a head fireman. The intention of art. 4 (1) (*d*) was to get as much work done as possible; that a workman might be put to something else if work was not available to him in his usual occupation; and that the minimum wage was to be paid if, but only if, the workman fulfilled the conditions in art. 4 (1) (*d*). The county court judge had found that the work of a head fireman was not available, the proposed reconstitution of duties being *bona fide*; that it was reasonable to ask the plaintiff to do the work of an ordinary fireman; and that he was offered the normal wages for that work. He had not, however, been willing to perform services as prescribed in art. 4 (1) (*d*), and had not, therefore, qualified under the sub-paragraph for the sum which the judge had awarded him. It was contended for the plaintiff that he was entitled to a head fireman's wages for doing the work of an ordinary fireman after the rearrangement of duties. He (his lordship) had formed no conclusion on that difficult question; but, even on the assumption that that contention was right, the plaintiff had failed to qualify for the wages claimed. If he thought that he was not being offered a proper wage, his proper course was to continue to work and raise the question in the regular manner. The appeal must be allowed.

SOMERVELL, L.J., gave judgment agreeing.

ASQUITH, L.J., agreed.

COUNSEL: *Beney*, K.C., and *R. H. Norris; Fox-Andrews*, K.C., and *Norman Carr*.

SOLICITORS: *Peacock & Goddard*, for *Ernest W. Haden and Stretton*, Walsall; *Sharpe, Pritchard & Co.*, for *Underhill, Willcock and Taylor*, Wolverhampton.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Inland Revenue Commissioners *v.* Wesleyan and General Assurance Society

Lord Greene, M.R., Cohen and Asquith, L.JJ.
19th November, 1946

Revenue—Income tax—Annuity and life assurance—Optional interest-free loans—Whether assessable—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *All Schedules Rules, r.* 21 (*as amended by Finance Act*, 1927 (17 & 18 *Geo.* 5, *c.* 10), *s.* 26).

Appeal from a decision of Macnaghten, J.

On 24th May, 1944, one Hart signed a proposal form for an annuity and life assurance, with optional interest-free loans, with the appellant company. The proposal form stated that, in consideration of a payment of £500 by the assured, the society agreed to pay him (1) an annuity of £7 11s. by monthly instalments of 12s. 7d., and (2) a lump-sum payment at death equal to the aggregate of £4 14s. 8d. for each completed period of one month between the date of receipt of the purchase money by the society and the date of his death. In addition, the assured had the option of borrowing, on a bond to be entered into, sums not exceeding what would be payable by way of lump sum under the policy if he had died on the date on which the loan was granted. The loan was to be free of interest, and was repayable at death by set-off against the lump sum payment due at death. The assured, having elected to borrow from the society to the maximum extent permitted by the bond, on 25th June, 1944, and monthly thereafter, gave the society a receipt for the amount of the annuity, less tax, and for the amount received as a loan free of interest. In making that payment the society deducted income tax from the annuity, but not from the loan. The society, appealing against an assessment to income tax made on them for the year ended 5th April, 1945, under r. 21 of the All Schedules Rules to the Income Tax Act, 1918, as amended by s. 26 of the Finance Act, 1927, only disputed the assessment in so far as it related to monthly payments to the assured under the bond. They contended that the sums advanced as loans under the bond were not assessable as income. It was contended for the Crown that the sums paid under the bond were payments of an annuity, and that, that being their true nature, it was immaterial that they were described in the bond as loans. The Special Commissioners held that the payments were loans, and discharged the assessment. Macnaghten, J., held that the payments, though described as loans, were in effect payments of an annuity, and that the assessment must stand. The company appealed.

Lord Greene, M.R., said that the question at issue was whether, on the true construction of the contractual documents executed between Hart and the society, the sums in question paid to him by the society were an annuity or merely loans. The elementary principles governing cases of that kind were that it was the function of the court, in dealing with contractual documents, to consider them according to the ordinary principles of construction, giving to the language used its ordinary meaning save in so far as the context required some different meaning. A document was not to have a strained construction placed on it so as either to attract or to avoid tax. It must be considered as an ordinary document and the relevant tax legislation then applied to it. The doctrine of substance as against form did not entitle the court to neglect the form of a transaction, for in so many legal documents the two were the same. It had only the limited scope that the language used by the parties was not necessarily to be adopted as conclusive proof of what their legal relationship was. There was no reason to construe the contract here as anything other than a contract by which the society were to pay a lump sum at the death of Hart, the policy-holder, who was given a right to borrow certain sums on the security of the policy, the society, if he exercised the right, being entitled to call for the deposit with them of the policy. If full effect were given to the language used by the parties, it conferred a right on the assured to borrow such sums as he thought fit against the sum to be paid to him at death. There was no obligation to pay interest or to repay the loans save out of the sum payable on death. To construe the loans as an annuity was to rewrite the contract between the parties, for which there was no justification. It was argued for the Crown that, if Hart exercised his right of borrowing up to the maximum permissible amount, no sum would be payable to his executors at his death; that there would thereby be no sum which could be treated as payable at death; and that it was meaningless to say that a loan was to be repayable out of a sum which might never come into existence at all. He (his lordship) did not think that the fact that the sums borrowed might limit or exhaust the sum payable at death had anything to do with the question at issue. The society's liability remained a contractual liability to pay a lump sum at Hart's death. The primary obligation of the society was to pay such a sum, and, even if the borrowings turned out to be equal to what that sum turned out to be, the loans were repaid by setting them against the capital obligation to pay the lump sum at death. The appeal would therefore be allowed.

Cohen and Asquith, L.JJ., concurred.

Counsel: *Donovan*, K.C., and *Graham-Dixon*, for the company; *The Solicitor-General* (Sir Frank Soskice, K.C.), *Ll. Jenkins*, K.C., and *Hills*, for the Crown.

Solicitors: *Field, Roscoe & Co.*, for *Evershed & Tomkinson*, Birmingham; *Solicitor of Inland Revenue.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

CHANCERY DIVISION

M. W. Investments, Ltd. *v.* Kilburn & Envoy, Ltd.

Vaisey, J. 16th October, 1946

Landlord and tenant—Lease for three years or for duration of hostilities—Option to renew for seven years—Whether option valid—Validation of War-time Leases Act, 1944 (7 & 8 *Geo.* 6, *c.* 34), *s.* 1 (1) (3).

Adjourned summons.

By a lease dated the 10th February, 1942, the plaintiff company demised to the defendant company a picture theatre and adjoining premises for "the term of three years from the 5th January, 1942, or for a period covering the duration of hostilities between Great Britain and Germany and Italy and twelve months after the date of the termination of hostilities, whichever period shall be the longer, subject to the extension of such period as provided by clause 5 (4) hereof." Clause 5 (4) provided: "If the term of this lease shall not extend for a period of seven years from the said 5th January, 1942, and the lessees shall be desirous of continuing the term for a full period of seven years from such date" and shall give the notice therein specified, the lessors would grant a further term up to the 5th January, 1949, at the rent and subject to the covenants and conditions therein specified. By a notice dated the 4th December, 1945, the lessees purported to exercise the option conferred by cl. 5 (4). Doubts having arisen as to whether the option was exercisable on the 4th December, 1945, and as to how the lease and the Validation of War-time Leases Act, 1944, should be construed, by this summons it was asked whether the option had been validly exercised.

The Validation of War-time Leases Act, 1944, provides by s. 1 (1): " . . . any agreement . . . which purports to grant or provide for the grant of a tenancy for the duration of the war shall have effect as if it granted or provided for the grant of a tenancy for a term of ten years, subject to a right exercisable either by the landlord or tenant to determine the tenancy, if the war ends before the expiration of that term, by at least one calendar month's notice in writing given after the end of the war". Section 3 (3) provides that: "Nothing in the said section 1 shall affect any provision of an agreement to which that section applies, being a provision which does not relate to the duration of the tenancy . . ."

Vaisey, J., said that he must first approach the matter without regard to the Validation of War-time Leases Act, 1944, and the preliminary question was whether this lease, apart from statute, was valid to any and, if so, what extent. In *Lace* v. *Chandler* [1944] K.B. 368; 88 Sol. J. 135, it was held by the Court of Appeal that a tenancy for the duration of the war did not create a good leasehold interest on the ground of uncertainty of the term. Here there was a similar uncertainty, but there was a term of three years certain. The lessor could not say there was not a good lease for three years. He had next to consider what was the effect of cl. 5 (4). He had come to the conclusion that apart from the Act no effect could have been given to cl. 5 (4). The question he had to decide was whether, upon the true construction of the combined operation of the lease and Act, the option was exercisable at the date when the notice was given. Section 3 (3) indicated that the provisions of an invalid lease should so far as possible survive and should continue to operate as provisions of the hybrid production resulting from the combination of the statutory variations with the terms of the original bargain. The interference by the legislature with the original bargain was not intended to go further than was necessary to give full effect to the positive provisions of the Act, and every provision of the original arrangement, which was capable of standing consistently with such positive provisions, ought to continue so to stand. On the other hand, such of the original provisions as contradicted or conflicted with or were incompatible with the positive provisions of the Act must be rejected. The Act provided that the lease must be treated as having created a term of ten years. He had tried to reconcile the altered position

with cl. 5 (4). In his opinion cl. 5 (4) no longer applied either because it related to the "duration of the tenancy" within s. 3 (3) or because it could not be fitted into the scheme of the hybrid production.

COUNSEL: *Neville Gray*, K.C., and *A. de W. Mulligan*; *Charles Russell.*

SOLICITORS: *Warringtons*; *J. G. Bosman, Robinson & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Arnold's Trusts**; **Wainwright** *v.* **Howlett**

Wynn-Parry, J. 23rd October, 1946

Settlement—Special power of appointment amongst issue—No trusts declared in default of appointment—Gift over in default of issue—Power not exercised—Rights of issue—Whether condition of surviving imported into implied gift over—Whether issue take per capita.

Adjourned summons.

By a declaration of trust dated the 3rd November, 1897, trust funds were settled on A for life. After her death, the trustees were directed to hold the funds in trust "for the children of the said A or any of her issue in such shares (if more than one) and in such manner as she shall by any deed or deeds or by her will appoint. And in case there shall be no issue of the said A who being male shall attain the age of twenty-one years or being female shall attain that age or marry under that age then upon such trusts and in such manner as A shall by deed or will when not under coverture or by will while under coverture appoint." A died in 1944 without having exercised the special power of appointment. She was survived by five children and by six grandchildren. A had had four other children who predeceased her, three of them dying in infancy, the fourth attaining twenty-one. No grandchild predeceased her. By this summons the trustees asked between whom the trust funds became divisible on A's death.

WYNN-PARRY, J., said that the summons proceeded on the footing, first, that there was no resulting trust and that the court would imply a trust for some class of issue; secondly, that the class of issue was closed on the death of the testatrix. Upon that basis he was asked to say in whose favour the court would imply a trust. There was a gap in the trusts, as no provision was made for the children or issue of A, in the event of her not exercising the power of appointment. On this he had the guidance of Kindersley, V.-C., in *Lambert* v. *Thwaites* (1866), L.R. 2 Eq. 151, 155, where he said: "the general principle seems to be this: If the instrument itself gives the property to a class, but gives a power to A to appoint in what shares and in what manner the members of that class shall take, the property vests, until the power is exercised, in all the members of the class, and they will all take in default of appointment; but if the instrument does not contain a gift of the property to any class, but only a power to A to give it, as he may think fit, among the members of that class, those only can take in default of appointment who might have taken under an exercise of the power. In that case the court implies an intention to give the property in default of appointment to those only to whom the donee of the power might give it." It was impossible to spell out of the language a gift of the property to a class. The case fell within the second class defined in *Lambert* v. *Thwaites, supra.* The question there arose whether only those who survived A were entitled to take. There was no direct authority on this question where a case fell within the second of the two classes and the power of appointment was exercisable not only by will but also by deed. He would hold that there was nothing requiring issue to survive or attain twenty-one. He would not import anything from the gift over. There remained the question whether the class was to take *per capita.* He had been referred to *Brown* v. *Pocock* (1834), 6 Sim. 257; that case was an isolated one. It was against the trend of modern authority. The true view was stated in "Hawkins on Wills," 3rd ed., 75. He intended to hold that a tenancy in common was created. He would declare that the trust funds were divisible between all the children and remoter issue of A born in her lifetime, whether living at her death or not, and whether they attained the age of twenty-one, or, being females, married or not, in equal shares *per capita.*

COUNSEL: *Droop*; *Teague*; *Winterbotham*; *Wilfrid Hunt*; *E. Wright.*

SOLICITORS: *Snow, Fox & Co.*; *G. E. Hodgkinson.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

The "Humorist"

Willmer, J. 1st July, 1946

Shipping—Damage to barge lying at berth—"Dock"—Limitation of liability—Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (63 & 64 *Vict., c.* 32), *s.* 2 (4), (5).

Action tried by Willmer, J.

In January, 1944, the owners of the barge *Humorist* recovered judgment against the owners and occupiers of Nicholson's Wharf, Bromley-by-Bow, for damage to the barge and her cargo due to the wharfowners' failure to exercise reasonable care in the management of the berth at which she was lying. The wharfowners now sued the bargeowners for a declaration limiting their liability in respect of the damage in accordance with s. 2 (1) of the Merchant Shipping (Liability of Shipowners and Others) Act, 1900. By s. 2 (4) of that Act: "For the purpose of this section the term 'dock' shall include wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing places and jetties." By s. 2 (5): "For the purposes of this section the term 'owners of a dock or canal' shall include any person or authority having the control or management of any dock or canal, as the case may be." The bargeowners denied that the berth constituted a "dock" within the meaning of that section.

WILLMER, J., said that he did not think that it mattered for the present purpose in whom the ownership of the berth was vested. In their capacity as owners of the adjoining premises the wharfowners invited craft to come and use the berth, and they therefore came under a duty to exercise a measure of control over it sufficient to make it obvious that craft using the landing place were within the area over which the wharfowners exercised control. Premises like those in question, a warehouse constructed with an aperture in its walls for the delivery of goods into or from craft lying alongside, were a "landing place" as mentioned in the definition of a "dock" in s. 2 (4) of the Act of 1900. Its owners were persons having the control or management of the dock, and were entitled to limit their liability in respect of damage and loss caused to craft and goods on board by their negligent management of the berth. There would be judgment for the wharfowners accordingly.

COUNSEL: *Scott Cairns*; *Gething.*

SOLICITORS: *J. A. & H. E. Farnfield*; *Stocken, May, Sykes & Dearman.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ABOLITION OF THE DEATH PENALTY

IN recent weeks there has been great speculation as to whether the proposed Criminal Justice Bill will affect the death penalty as we know it in Britain, prophecies varying from its total abolition or its suspension for a trial period to its retention unchanged.

A paragraph in the *Law Society's Gazette* forecasting a trial suspension runs parallel to the *Daily Mail*, the *Observer* and the *Star*, while several provincial newspapers followed the lead of an *Evening Standard* editorial in supporting such an experiment. The *Daily Mirror* put forward 1949 as the commencing year for the trial. Since these forecasts were made, however, the Home Secretary has refused to commit the Government to any particular line of policy, intimating in the House of Commons on 28th November that he could hold out no prospect of legislation on the subject in the present session (see p. 603 of this issue).

In the belief that there is no smoke without fire, it may be of interest to examine some of the principal reasons put forward for abolishing the death penalty. An opportunity to do so occurred on 18th October, when a well-attended conference at Friends' House, London, heard the arguments of Miss Margery Fry, LL.D., J.P., one of our leading penologists, Wing-Commander E. R. Millington, M.P., and Mr. John Paton, M.P., who until July had, for twelve years, been secretary to the National Council for the Abolition of the Death Penalty. The conference had been arranged jointly by that Council, the Howard League for Penal Reform, and the Penal Reform Committee of the Society of Friends. The chair was to have been taken by Lord Chorley, but in view of his recent appointment to Government office it had been felt unwise for him to take part in the meeting, and Mrs. Theodora Calvert, J.P., a barrister of the Inner Temple, presided.

Earlier in the same week the men of Nuremberg had gone to their doom, Neville Heath had followed shortly afterwards, and the country was gripped by circumstantial details of the mass hanging of the Nazi chiefs and by recapitulations of the atrocities committed by the murderer of Mrs. Gardner. All the material was available for a highly emotional horror-appeal to the audience, but one of the most significant facts of the

evening's discussion was the unequivocal rejection of any such appeal, coupled with a preference for the traditional case against judicial executions, tried through the years as it had been. Such a choice was greatly to the credit of those responsible for the conference.

The first speaker confirmed a further general impression: though the meeting took place at the headquarters of the Society of Friends, the case put forward was no pacifist one. It was addressed to the men and women who believed it right in some circumstances to take life, and at that level the case was compelling. Wing-Commander Millington, after emphasising that his part in the war had led him to take life on numerous occasions, yet opposed capital punishment. The individual, he claimed, was not always solely responsible for crime; only too often society must share the blame. And while it was true that the murderer with a criminal history was the exception rather than the rule, the problem was still the same: one could never be sure that the individual was solely responsible, and it was of little avail to punish one crime by a crime of equal magnitude.

Yet Miss Fry, a descendant of Elizabeth Fry and a daughter of Fry, J., admitted at the outset that punishment was an essential feature of criminal treatment. Nevertheless, the death penalty was *par excellence* the manifestation of the idea of retribution pure and simple. (Possibly the aptest remark on the reverse of the picture was by the late Dr. Temple who, when Archbishop of York, wrote in the *Spectator*: "It is only on the hypothesis of immortality that the death penalty can be regarded as reformative at all; and it is doubtful whether many of those who incur it have a sufficiently vivid faith in a future life to accept the sentence of death as a temporary discipline.") Fear was the dominant element. It was a strange fact that, contrary to popular belief, fear could not be relied on as a deterrent: people developed a defensive mechanism against the gravest personal dangers. Men and women who hid at the first onslaught of bombing gradually became bolder until they were able to take extraordinary risks of injury without turning a hair. They became convinced that, whatever might happen to other people, death or injury could not or would not happen to them.

"That," Miss Fry continued, "is the explanation of our amazing indifference to the atom-bomb; it also explains why murders are committed, for those guilty of premeditated murder are in the main the very people who have convinced themselves that they have found the way to murder with impunity." She knew from personal experience of a murder in her home village years ago how real and widespread was the suffering caused to those who had been even remotely connected with the murderer. To take an extreme example, it was quite possible for a condemned man to suffer less mental torment than relations who visited him in prison before the execution.

Another practical point advanced by Miss Fry was that in preparation for a great move forward in the treatment of crime the prison service demanded men and women of developed social consciousness to help reform the enemies of society; the death penalty, with its finality, flew in the face of all modern treatment of the offender and, by the very possibility of having to assist in its infliction, penal workers were being excluded from the service. She herself had seen the staff of our prisons physically ill before a hanging and the prison chaplain whose duty it was to attend all executions was frequently the most convinced opponent of the whole system.

Many of the most attractive arguments against the death penalty had been reserved, obviously by prearrangement, for the last speaker, Mr. Paton, who expanded the idea of fear introduced by Miss Fry. The death penalty, he claimed, was born in fear and operated in fear—born in fear because those who believed in it did so as a necessary ingredient of social safety; operated in fear because the claims for secrecy sometimes put forward would defeat its deterrent force, so that, given the rightness of the instrument, publicity to attain maximum fear was the logical end. All the pomp and circumstance of the law was brought into play to achieve the maximum effect on the public mind.

"Does the death penalty in fact deter people from murder?" asked Mr. Paton. "It is claimed that capital punishment does not reduce the number of murders but prevents their increase. Is the claim valid? On approximately 150 occasions in each year this special deterrent fails to operate. Why is this? More than a quarter are crimes of insanity, which, *ex hypothesi*, cannot be deterred. Others are crimes of impulse, which come largely within the same category, because, as a learned judge put it, they are done at a moment when a person is devoid of control over his actions. In the residue of cases—those of full premeditation—the murderer takes enormous risks because he is persuaded in advance that he will not be found out; therefore no penalty at all can deter him from his crime."

So much for the actual murders. What of the effect on others? Here the speaker took out his strongest card and, following the example of our Foreign Secretary, laid it on the table, face upwards. Before the war over thirty States had either abolished capital punishment or allowed it to fall into desuetude. Included in these were all the Scandinavian countries, Portugal, Rumania and many South African countries and some states of America. Comparison between State and State was unavailing, but, according to evidence tendered to the Select Committee which recommended the trial abolition of the death penalty in 1930, in not one single instance was the extent of homicide increased when the death penalty was removed. In all cases the graph moved downward. From his wide experience Mr. Paton believed that the nature of the punishment had no effect at all, and the real factors operating were the social and economic trends of the day.

After dealing with the allegations, sometimes put forward, that, but for the death penalty, criminals would take to carrying firearms to shoot their way out of a difficult situation, Mr. Paton put forward the constructive alternative of life imprisonment as for murderers at present reprieved, so that continued detention should at least have the chance of exercising a reforming influence. At the same time a thorough revision of the penal system was called for, and he looked to the Government to take a great step forward in this direction when the Criminal Justice Bill was presented and to include in it the removal of capital punishment. And inasmuch as Labour Party Conferences have twice voted for abolition or suspension this seems no unreasonable prospect.

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read Third Time:—

TRUSTEE SAVINGS BANKS BILL [H.L.] [28th November.

In Committee:—

GREENWICH HOSPITAL BILL [H.L.] [28th November.

HOUSE OF COMMONS

Read First Time:—

ARBROATH GAS PROVISIONAL ORDER BILL [H.C.] [28th November.

To confirm a Provisional Order under the Burgh Police (Scotland) Act, 1892, relating to Arbroath Gas.

NATIONAL HEALTH SERVICE (SCOTLAND) BILL [H.C.] [26th November.

To provide for the establishment of a comprehensive health service for Scotland, and for purposes connected therewith.

PENSIONS (INCREASE) BILL [H.C.] [28th November.

To authorise further increases under, and otherwise amend, the Pensions (Increase) Act, 1944, and to continue that Act in force as amended; and to authorise increases in pensions to which that Act does not apply.

ST. ANDREWS LINKS ORDER CONFIRMATION BILL [H.C.] [27th November.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to St. Andrews Links.

TRANSPORT BILL [H.C.] [27th November.

To provide for the establishment of a British Transport Commission concerned with transport and certain other related matters, to specify their powers and duties, to provide for the transfer to them of undertakings, parts of undertakings, property, rights, obligations and liabilities, to amend the law relating to transport, inland waterways, harbours and port facilities, to make certain consequential provision as to income tax, to make provision as to pensions and gratuities in the case of certain persons who become officers of the Minister of Transport, and for purposes connected with the matters aforesaid.

Read Second time:—

AGRICULTURAL WAGES (REGULATION) BILL [H.C.] [25th November.

CIVIC RESTAURANTS BILL [H.C.] [28th November.

EXCHANGE CONTROL BILL [H.C.] [26th November.

ROAD TRAFFIC (DRIVING LICENCES) BILL [H.C.] [27th November.

ROYAL MARINES BILL [H.C.] [27th November.

Read Third Time :—

EXPIRING LAWS CONTINUANCE BILL [H.C.] [29th November.

LONDON AND NORTH EASTERN RAILWAY ORDER CONFIRMATION BILL [H.C.] [29th November.

MINISTRY OF DEFENCE BILL [H.C.] [29th November.

UNEMPLOYMENT AND FAMILY ALLOWANCES (NORTHERN IRELAND) AGREEMENT BILL [H.C.] [29th November.

QUESTIONS TO MINISTERS

PENSIONS APPEAL TRIBUNALS

Major McCALLUM asked the Minister of Pensions if he will speed up the arrangements by which pension appeals submitted to the appeal tribunals can be heard; and if he will consider the appointment of more tribunals in view of the great hardship caused to the appellants by the long delay in arriving at decisions in these cases.

Mr. BLENKINSOP: Considerable progress has been made in disposing of entitlement appeals and those still outstanding will be dealt with as quickly as possible. Recent decisions of the High Court and Court of Session are, however, necessitating a more detailed statement of the Ministry's reasons for rejection and this inevitably affects the speed with which cases can be prepared. The appointment of tribunals is not the responsibility of my right hon. friend, but I have no reason to think that the hearing of appeals is being held up owing to a lack of tribunals. [26th November.

WAR DAMAGE PAYMENTS (DETERIORATED PROPERTY)

Mr. TURTON asked the Financial Secretary to the Treasury whether he is aware that many properties damaged by enemy action have suffered from deterioration and looting during wartime to such an extent that they are now beyond repair; and whether he will, in suitable cases, authorise a value payment instead of a cost of works payment.

Mr. GLENVIL HALL: Where deterioration causes war-damaged property to become a total loss a value payment, and not a cost of works payment, will be payable, but may be reduced because of the owner's neglect. Damage caused by looting is not war damage, but if as a result of looting it becomes impossible to make good the war damage a value payment will be payable. [26th November.

POST OFFICE SAVINGS BANK (TRUST MONEY)

Mr. DIGBY asked the Assistant Postmaster-General why trust money cannot be deposited in the Post Office Savings Bank, having regard to the fact that he is still appealing for national savings.

Mr. BURKE: An account may be opened in the Post Office Savings Bank by a person in trust for a named beneficiary. The account is regarded as held jointly by the trustee and beneficiary for the purposes of withdrawals and accordingly the signatures of all parties to the account are required in respect of a withdrawal. An account in the names of trustees as such without the name of the beneficiary cannot be opened, as, apart from other considerations, it would be impracticable to operate the prescribed limits on deposits. [26th November.

CAPITAL PUNISHMENT

Mr. LESLIE HALE asked the Secretary of State for the Home Department whether in view of the recommendation of the Select Committee on Capital Punishment that capital punishment should be suspended for a limited experimental period, he is prepared to take the necessary steps to implement this recommendation.

Mr. EDE: Legislation would be necessary to implement this recommendation and I can hold out no prospect of legislation on this subject in this session.

Mr. HECTOR HUGHES: Will my right hon. friend have this matter reconsidered in the light of the most recent researches and having regard to the needs of today?

Mr. EDE: This matter is under review in connection with contemplated legislation. [28th November.

TENANCY PREMIUMS

Mr. JANNER asked the Minister of Health whether he is aware that large premiums are being requested as a consideration for the granting or transfer of leases and other tenancies of some houses and flats; and whether he will take steps to deal with this position in respect of those cases where the Rent Acts do not afford protection against such demands.

Mr. BEVAN: The reply to the first part of the question is "Yes, sir." As regards the second part, the matter is one which will be considered in connection with the proposed review of the Rent Restrictions Acts, but I can hold out no prospect of early legislation. [28th November.

RENT TRIBUNALS (LOCAL AUTHORITY REFERENCES)

Mr. SPARKS asked the Minister of Health in how many cases local authorities have submitted references to the furnished houses rent control tribunals; and in what circumstances such references should be made.

Mr. BEVAN: Up to the end of October one reference only had been made to a tribunal by a local authority. It is for the local authority to determine in the light of the circumstances of individual cases when they should exercise their power to submit references to tribunals.

Mr. SPARKS: Is the Minister aware that many tenants refrain from making references to the rent tribunals owing to their fear of subsequent eviction? Would my right hon. friend say that these would be appropriate cases in which the local authority might act on their own initiative?

Mr. BEVAN: I do not want to inspire the local authorities to make references to the tribunals at the moment because the number of ordinary references which are being made are quite enough to occupy the tribunals. [28th November.

LEGAL AID (PROPOSED LEGISLATION)

Mr. HALE asked the Attorney-General whether he is now in a position to make a statement as to the Government's intentions with reference to the Rushcliffe Report on Law Reform.

THE SOLICITOR-GENERAL: My noble friend the Lord Chancellor has said in another place that he does not think it likely that he will be able to introduce a Bill implementing the recommendations of the Rushcliffe Committee on Legal Aid in this session. Work is still proceeding with The Law Society, the Treasury and other bodies concerned in the task of framing the details to be included in the proposed legislation, but a great deal of preparatory work still has to be done. When this work has been completed, and Parliamentary time can be found, the Bill will be introduced, although, as stated, I think it is unlikely that it will be possible this session. Hon. members will have noticed that my noble friend has already said in another place that he is most anxious to get on with this Bill. [28th November.

OBITUARY

MR. A. JACKSON

Mr. Albert Jackson, LL.B., solicitor, of Oldham, died on Monday, 11th November, aged fifty-eight. He was admitted in 1912.

Mr. C. LEGGATT

Mr. Clifford Leggatt, solicitor, of Newtown, Montgomeryshire, died on Wednesday, 27th November. He was admitted in 1919.

MR. E. E. MAVROGORDATO

Mr. Eustratius Emmanuel Mavrogordato, barrister-at-law, for many years a contributor to *The Times* and *The Times Literary Supplement*, died on Friday, 8th November, aged seventy-six. He was called by the Inner Temple in 1895.

Mr. W. W. T. PROSSER.

Mr. William Wozencraft Thomas Prosser, solicitor, of Messrs. Morgan Griffiths, Son & Prosser, solicitors, of Carmarthen, died on Wednesday, 27th November, aged seventy-six. He was admitted in 1893.

Mr. A. T. ROACH

Mr. Alfred Thomas Roach, Town Clerk of the City of London, died on Thursday, 28th November, aged forty-six. He was called by Gray's Inn in 1928.

Mr. J. S. WATSON

Mr. James Stuart Watson, Writer to the Signet, of Messrs. Macandrew & Jenkins, solicitors, of Inverness, died on Tuesday, 26th November, aged eighty-five.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

No. 1945. **Coal Industry Nationalisation** (Apportionments, Documents, etc.) Regulations. November 18.

No. 1946. Coal Industry Nationalisation (Contracts) Regulations. November 18.

No. 1938. **Hire-Purchase and Credit Sale Agreements** (Control) (No. 3) Order. November 18.

No. 1943. **Local Government** (Adjustment of Grants) (Scotland) Regulations. November 18.

No. 1967. **Probation Rules.** November 21.

HOUSE OF COMMONS PAPERS (SESSION 1945–46)

No. 188. **Supreme Court of Judicature.** Account of the Accountant-General for the year ended February 28,

1946; Statement of the Liability of the Consolidated Fund; Account of the National Debt Commissioners for the same period; Report of the Comptroller and Auditor General.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

His Honour J. G. TRAPNELL, one of the official referees of the High Court of Justice, has been appointed a Commissioner of Assize on the South-Eastern Circuit.

The following appointments have been made in the Colonial Legal Service:—

Major I. V. ELYAN to be Resident Magistrate, Gold Coast; Capt. E. G. HALLIWELL to be Registrar General, Lands and Mines Department, Tanganyika; Mr. R. D. LLOYD to be Crown Counsel, Nigeria; Capt. L. P. MOSDELL to be Registrar of Deeds, Lands and Mines, Northern Rhodesia; Mr. N. V. REED to be Magistrate, Nigeria; Mr. E. B. SIMMONS to be Legal Assistant, Gibraltar; Mr. H. C. SMITH to be District Magistrate, Gold Coast; Mr. F. E. WEBSTER to be Assistant Commissioner of Lands, Gold Coast; Sqdn.-Ldr. J. WICKS to be Crown Counsel, Palestine.

Professional Announcement

Mr. WILLIAM HARRISON, who has for many years practised as a solicitor under the name of HARRISON SUGDEN & CO., has retired from practice and his firm is now incorporated with Messrs. J. D. LANGTON & PASSMORE, of 8, Bolton Street, London, W.1.

Notes

The "Landlord and Tenant Notebook" is unavoidably held over this week.

Mr. Frederick Catley, one of the managing clerks of Messrs. Booth, Wade, Lomas-Walker & Co., of Leeds, retired on 30th November, after over fifty years' service with the firm.

An ordinary meeting of the Medico-Legal Society was held at Manson House, 26, Portland Place, W.1, on 28th November, 1946, at 8.15 p.m., when a paper was read by Mr. Ivor Back, M.B., Ch.B., F.R.C.S., on: "The Murder of Miss Gilchrist."

A meeting of the United Law Society was held in the Barristers' Refreshment Room, Lincoln's Inn, on Monday, 25th November. Mr. R. J. Kent was in the chair. Mr. F. R. McQuown proposed: "That this House disapproves of Woman." Mr. H. W. Sharp opposed. There also spoke: Messrs. G. B. Burke, R. N. Hales, O. T. Hill, S. E. Redfern, C. H. Pritchard, T. A. Holford, Mrs. G. B. Burke and Dr. R. D. Pett. Mr. McQuown replied, and the motion was lost by five votes.

The 119th annual general meeting of the Incorporated Law Society of Liverpool was held on Friday, 29th November. The retiring president (Mr. H. M. Alderson Smith) presided over a well attended meeting and delivered an address. The committee's report and accounts for the past year were duly adopted. On the motion of Mr. L. S. Holmes, seconded by Mr. R. Marshall, the president was thanked for his interesting address. A vote of thanks was accorded to the officers and committee for their services during the past year.

At a meeting of the Law Students' Debating Society, held at The Law Society's Court Room, on Tuesday, 26th November (chairman, Mr. H. S. Law), the subject for debate was: "That this House advocates polygamy." Mr. J. E. Terry opened in the affirmative. Mr. R. J. A. Temple opened in the negative. The following members and visitors also spoke: Mrs. H. MacMaster, Mr. D. Kennedy, Mrs. Jeans, Miss Scott, Mr. D. Wilson, Miss Eldridge, Mr. E. D. Syson, Mr. H. J. Baxter, Mr. A. H. Simpson, Miss Harding, Mr. B. W. Main, Mr. R. Watson and Mr. M. O. Oyemade. The opener having replied, the motion was carried by two votes. There were twenty-six members and ten visitors present.

Three more rent tribunals have been set up, bringing the number of rent tribunals in England to fifty-five. Only seventeen more remain to be set up to cover the areas of authorities in England which have asked for tribunals. Details: *Barnsley and Doncaster*—Worksop, Bentley-with-Arksey, Conisbrough Mexborough and Rawmarsh and the rural districts of Hemsworth, Osgoldcross and Worksop. Chairman: Mr. J. H. Ranyard. Member and Reserve Chairman: Mr. A. S. Madeley. Member: Mr. F. C. Rowbotham. Reserve Member: Mr. E. C. Dickson. Clerk: Mr. D. Hallam. Office: 6, King's Arcade Chambers, St. Sepulchre Gate, Doncaster. *Southend-on-Sea*—Dagenham, Romford, Brentwood, Canvey Island, Hornchurch and Thurrock. Chairman: Mr. G. S. Tilbury. Member and Reserve Chairman: Mr. W. C. Allen. Member: Mrs. L. F. Evans. Reserve Members: Mr. T. C. J. Gurnett, Mrs. I. M. Brocklebank and Mr. A. A. Turner. Clerk: Mr. W. A. Bird. Office: 11, Nelson Street, Southend-on-Sea. *Norwich and Great Yarmouth*—Beccles, King's Lynn, Lowestoft, Bungay and Wymondham, and the rural districts of Depwade, Docking, Freebridge Lynn, Forehoe and Henstead, Loddon, Lothingland, St. Faith's and Aylsham, Wayland and Walsingham. Chairman: Judge Rowlands. Member and Reserve Chairman: Mr. N. W. Morgan. Member: Mr. C. B. L. Prior. Reserve Members: Mr. F. Bell, Mr. R. A. Mellanby. Clerk: Mr. A. E. Osborne. Office: 3, Colegate, Norwich.

SUPREME COURT
CHRISTMAS VACATION, 1946

Notice is hereby given that an Order has been made under rr. 6 and 9 of Ord. LXIII closing the offices of the Supreme Court from 12.30 p.m. on Tuesday, the 24th December to Sunday, the 29th December, 1946, inclusive, and on Saturday, the 4th January, 1947.

The Order does not apply to the District Registries of the High Court, each of which will be closed on the same days as the local county court office. (See Ord. LXIII, r. 10.)

THE UNION SOCIETY OF LONDON

Subjects for debate in December, 1946:—

Wednesday, 4th December: "That no increase in rations in Great Britain can be justified until those of the British zone in Germany are substantially raised."

Wednesday, 11th December (joint debate with Gray's Inn Debating Society): "That this House welcomes the decline in political significance of the Liberal party to-day."

Wednesday, 18th December: "That the Civil Service is incapable of carrying out its growing task."

The next meeting will be held on 15th January, 1947. Meetings in the Barristers' Refreshment Room, Lincoln's Inn, at 8 p.m. Further information may be had from the hon. secretary: Mr. W. G. Wingate, 2, Garden Court, Temple, E.C.4. Phone: Central 4741.

THE LAW ASSOCIATION

The usual monthly meeting of the directors of The Law Association was held at The Law Society's Hall, on Monday, 2nd December, with Mr. S. Hewitt Pitt in the chair. The other directors present were: Messrs. C. A. Dawson, T. L. Dinwiddy, Ernest Goddard, H. T. Traer Harris, G. D. Hugh Jones, Frank S. Pritchard, Wm. Winterbotham, and the secretary, Mr. Andrew H. Morton. The sum of £396 was voted in relief of deserving applicants, and an appeal to London solicitors not members of the Association to join so as to help the Board in carrying out their work was settled, and other general business transacted. The help of London solicitors in carrying out the work of this, the first Association formed for the assistance of solicitors in London and their dependants, is urgently needed, annual subscription being £1 1s., and life membership £10 10s. Application should be made to the secretary, at 3, Gray's Inn Place, Gray's Inn, W.C.1.

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1946

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Vaisey.
Mon., Dec. 9	Mr. Hay	Mr. Jones	Mr. Reader
Tues., ,, 10	Farr	Reader	Hay
Wed., ,, 11	Blaker	Hay	Farr
Thurs., ,, 12	Andrews	Farr	Blaker
Fri., ,, 13	Jones	Blaker	Andrews
Sat., ,, 14	Reader	Andrews	Jones

	Group A.		Group B.	
Date.	Mr. Justice Roxburgh *Witness.*	Mr. Justice Wynn-Parry *Non-Witness.*	Mr. Justice Evershed *Non-Witness.*	Mr. Justice Romer *Witness.*
Mon., Dec. 9	Mr. Blaker	Mr. Andrews	Mr. Farr	Mr. Hay
Tues., ,, 10	Andrews	Jones	Blaker	Farr
Wed., ,, 11	Jones	Reader	Andrews	Blaker
Thurs., ,, 12	Reader	Hay	Jones	Andrews
Fri., ,, 13	Hay	Farr	Reader	Jones
Sat., ,, 14	Farr	Blaker	Hay	Reader